राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 14 दिसम्बर, 2017 / 23 मार्गशीर्ष, 1939

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, *the* 8th *August*, 2017

No: Shram (A) 6-3/2017 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr. No.	Reference/Application	Title	Section
1.	Ref.18/2016	Sh. Rajeev Kumar V/s Jai Parkash Power Ventures Ltd.	10
2.	Ref.99/2016	Sh.Het Ram V/s XEN IPH Kasumpti.	10
3.	Ref.04/2017	Sh. Het Ram V/S -do-	10
4.	Ref.110/2016	Sh. Uttam Singh V/s XEN HPSEB Rampur Bushar.	10
5.	Ref.02/2017	Sh.Narender Sharma V/s XEN HPSEB Shimla-2.	10
6.	Ref.41/2016	Smt. Nirmala Chauhan V/s MD HP Agro Packing Shimla.	10
7.	Ref.60/2016	Sh. Mohan Lal V/s XEN HPSEB Charli Villa Shimla.	10
8.	Ref.58/2011	Sh. Raj Kumar & Ors V/S M/S Emmbros Auto Comp Ltd.	10
9.	Ref.41/2014	Smt. Kanta Devi V/s The Secy. Himachal Khadi Ashram Shimla.	10
10.	Ref.33/2017	Sh. Shyamanand V/s MD H.P. Transport Corp. Shimla.	10
11.	Ref.78/2015	Sh. Dalesh Kumar V/s MD HRTC Shimla.	10
12.	Ref.72/2014	Sh. Anil Kumar V/S Director Ayurveda kasumpti Shimla.	10
13.	Ref.71/2014	Sh. Nishant Kaul V/S -do-	10
14.	Ref.10/2006	Sh. Harbans Singh V/s M/S Alembic Ltd. Parwanoo.	10
15.	Ref.84/2005	Sh. Pawan Kumar Ors V/s The XEN HPSEB Parwanoo.	10
16.	Ref.88/2010	Asian Electronices Ltd. Kamgar Sangh Chambaghat, Solan V/s Factory Manager M/S Asian Electronices Ltd. Chambaghat District Solan, H.P.	10

By order,
R. D. DHIMAN, IAS,
Pr. Secretary (Lab. & Emp.).

6.6.2017.

Present: None for the petitioner.

Shri Prateek Kumar, Advocate vice Shri Rahul Mahajan, Advocate for respondent.

Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. For today, the case has been listed for filing of claim on behalf of the petitioner but neither the petitioner nor his counsel appeared before this Court in order to file the statement of claim. The record reveals that this reference is being adjourned for filing of claim since 26.4.2016 i.e for more than a year and the petitioner has availed as many as ten opportunities to file the claim but despite repeated opportunities, the petitioner has failed to file the statement of claim which clearly shows that the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

"**Whether termination of the services of Rajeev Kumar S/O Sh. Hardyal Singh, Village Kandeli (Jalie), P.O. Surad, Tehsil Rampur, Distt. Shimla, H.P. w.e.f. 15.7.2014 by the management of Jai Parkash Power Ventures Ltd. Sholtu, P.O. Tapri, Teshil Nichar,**

Distt. Kinnaur, H.P. (Now M/s Himachal Baspa Power Venture Limited. Site office at Shimla, P.O. Tapri Tehsil Nichar, Distt. Kinnaur, H.P.) without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved worker is entitled to from the above employer/management?"

From the aforesaid reference is the clear that the petitioner has alleged his termination w.e.f. 15.7.2014 to be illegal and unjustified but despite affording repeated opportunities in order to file the claim, none appeared on behalf of petitioner which seems that the petitioner is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent w.e.f. 15.7.2014. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

———

12.6.2017.

Present: None for the petitioner.

Ms. Reena Chauhan, Dy. DA for respondent.

Before, I proceed further, it is important to mention here that the appropriate government had sent two references with respect to the present petitioner Shri Het Ram and while receiving the references, both were registered separately as reference no. 99 of 2016 and reference no. 4 of 2017 and notices were also issued separately. In both the references the common issue regarding termination of services of petitioner during July/August, 1986 is involved. Since, the petitioner has failed to appear and file any statement of claim in both the references despite repeated opportunities, hence, I have left with no alternate but to dispose of both the references with a common order.

The cases were called repeatedly but none appeared on behalf of petitioner. For today, both the cases have been listed for the filing of claim petition on behalf of the petitioner. The record reveals that after the receipt of both references, notices have been issued to both the parties and thereafter various opportunities have been granted to the petitioner in order to file the claim but today, neither the petitioner nor his counsel appeared before this Court and to file statement of claim which means that the petitioner is not interested to pursue his claim arising out of both the references. Hence, this Court is left with no other alternative but to decide both the references on the basis of material whichever is available on file.

The terms of reference in reference no. 99 of 2016 are reproduced as under:

"Whether alleged termination of services of Sh. Het Ram S/O Sh. Hira Dass R/O Village Bog, P.O. Mashobra, Tehsil & Distt. Shimla, H.P. during July, 1986 by the Executive Engineer, I & PH Division No.1, Kasumpti, Shimla-9, who had worked as beldar on daily wages with above employer and has raised his industrial dispute after

about 27 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of about 27 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

The terms of reference in reference no. 04 of 2017 are reproduced as under:

"Whether alleged termination of services of Sh. Het Ram s/o Sh. Hira Dass r/o Village Bog, P.O. Mashobra, Tehsil & Distt. Shimla, H.P. during August, 1986 by the Executive Engineer, I & PH Division No.1, Kasumpti, Shimla-9, who had worked for 100 days during 1986 and raised his industrial dispute after about 27 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 100 days only during 1986 and delay of about 27 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

From both the aforesaid references it is clear that the petitioner has alleged his termination during July/August, 1986 to be illegal and unjustified but despite affording repeated opportunities to file the statement of claim, the petitioner has failed to appear before this Court and to file statement of claim in support of his case arising out of both the references. The aforesaid references also make it clear that the petitioner had raised the present dispute after about 27 years which seems that the petitioner is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during July, 1986. Hence, both the references are answered against the petitioner and the awards are passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. It is further ordered that an authenticated copy of this order be also placed on record in reference no. 4 of 2017. Both the files, after completion be consigned to records.

(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

12.6.2017.

Present: None for the petitioner.
Ms. Reena Chauhan, Dy. DA for respondent.

Before, I proceed further, it is important to mention here that the appropriate government had sent two references with respect to the present petitioner Shri Het Ram and while receiving the references, both were registered separately as reference no. 99 of 2016 and reference no. 4 of 2017 and notices were also issued separately. In both the references the common issue regarding termination of services of petitioner during July/August, 1986 is involved. Since, the petitioner has failed to appear and file any statement of claim in both the references despite repeated opportunities, hence, I have left with no alternate but to dispose of both the references with a common order.

The cases were called repeatedly but none appeared on behalf of petitioner. For today, both the cases have been listed for the filing of claim petition on behalf of the petitioner. The record reveals that after the receipt of both references, notices have been issued to both the parties and thereafter various opportunities have been granted to the petitioner in order to file the claim but today, neither the petitioner nor his counsel appeared before this Court and to file statement of claim which means that the petitioner is not interested to pursue his claim arising out of both the references. Hence, this Court is left with no other alternative but to decide both the references on the basis of material whichever is available on file.

The terms of reference in reference no. 99 of 2016 are reproduced as under:

"Whether alleged termination of services of Sh. Het Ram S/O Sh. Hira Dass R/O Village Bog, P.O. Mashobra, Tehsil & Distt. Shimla, H.P. during July, 1986 by the Executive Engineer, I & PH Division No.1, Kasumpti, Shimla-9, who had worked as beldar on daily wages with above employer and has raised his industrial dispute after about 27 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of about 27 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

The terms of reference in reference no. 04 of 2017 are reproduced as under:

"Whether alleged termination of services of Sh. Het Ram s/o Sh. Hira Dass r/o Village Bog, P.O. Mashobra, Tehsil & Distt. Shimla, H.P. during August, 1986 by the Executive Engineer, I & PH Division No.1, Kasumpti, Shimla-9, who had worked for 100 days during 1986 and raised his industrial dispute after about 27 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 100 days only during 1986 and delay of about 27 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

From both the aforesaid references it is clear that the petitioner has alleged his termination during July/August, 1986 to be illegal and unjustified but despite affording repeated opportunities to file the statement of claim, the petitioner has failed to appear before this Court and to file statement of claim in support of his case arising out of both the references. The aforesaid references also make it clear that the petitioner had raised the present dispute after about 27 years which seems that the petitioner is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during July, 1986. Hence, both the references are answered against the petitioner and the awards are passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. It is further ordered that an authenticated copy of this order be also placed on record in reference no. 4 of 2017. Both the files, after completion be consigned to records.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

17.6.2017.

Present: None for the petitioner.

Shri Ramakant Sharma, Advocate for respondent.

Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his counsel appeared before this Court. For today, the case has been listed for filing of claim. The record reveals that after the receipt of reference from the appropriate government, the notices were issued to the parties to appear before this Court and on 13.12.2016, Shri Vasu Sood, Advocate appeared for petitioner and Shri Sudhir Negi, Advocate for respondent before this Court and thereafter the case was adjourned for 12.1.2017 for filing of claim but despite affording various opportunities to file the claim, the petitioner has failed to file any claim and even today, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his claim arising out of the reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

"Whether alleged termination of services of Shri Uttam singh s/o Sh. Chain Ram, r/o Village-Batoona, P.O. Nogli, Tehsil Rampur, Distt. Shimla, H.P. during April, 1998 by the Executive Engineer, Electrical Division, H.P.S.E.B. Limited, Rampur Bushahar, Distt. Shimla, H.P., who had worked for 23 days only during the year 1998 and has raised his industrial dispute after more than 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 23 days only in 1998 and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority past service benefits and compensation the above ex-worker is entitled to from the above employer?"

From the aforesaid reference is the clear that the petitioner has alleged his termination during April, 1998 to be illegal and unjustified but despite affording repeated opportunities to file the claim, none appeared today on behalf of petitioner. The aforesaid reference also makes it clear that the petitioner had worked only for 23 days during the year, 1998 and raised the present dispute after more than 14 years. It appears that the petitioner is not interested to pursue the present claim arising out of reference. Therefore, in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent during April, 1998. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

1.3.2017**.**

Present: None for the petitioner.

Ms. Reena Chauhan, Dy. DA for respondent.

This case is being listed for the service of the petitioner w.e.f. 3.9.2016 and thereafter as many as five times the notices were issued/sent for the service of the petitioner on the address given by the office of Labour Commissioner on reference itself. However, despite that the petitioner has

failed to appear before this Court. It is relevant to mention here that the Labour Commissioner has also informed the petitioner about the present reference by sending a copy of this reference to him as such the petitioner is having knowledge that the reference has been sent to this Court by the Labour Commissioner for adjudication. Thus, he could have himself appeared before this Court in order to file his claim.

In the light of aforesaid facts, it appears that the petitioner is not interested to pursue his claim. Therefore, to further adjourn the case would be a futile exercise. The following reference qua the termination of services of petitioner was received from appropriate government for adjudication:

> **"Whether alleged termination of services of Shri Narender Singh S/o Late Shri Mandass R/o Village Jajehar, P.O Gumma, Tehsil & District Shimla, HP during June, 1988 by the Executive Engineer, I&PH Division No.II District Shimla, HP who had worked as beldar on daily wages only for 21 days in the year, 1988 and has raised his industrial dispute more than 24 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? IF not, keeping view of working period of 21 days in the years, 1988 and delay of more than 24 years in raising the industrial dispute what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"**

From the reference, it is clear that the petitioner has alleged his termination during June, 1988 to be illegal and unjustified. However, for the failure of the petitioner to have appeared before this Court in order to file statement of claim and to lead evidence, it cannot be held that his services were wrongly and illegally terminated by the respondent. Moreover, from the reference it is also clear that the petitioner had worked only for 21 days in the year, 1988 and raised his dispute after a lapse of more than 24 years which shows that he is not serious about the dispute raised by him. Hence, in the absence of any material on record, the reference is answered against the petitioner and the award is passed accordingly. However, the petitioner is at liberty to revive this reference by moving an appropriate application. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref no.	:	41 of 2016.
Instituted on	:	2.5.2016.
Decided on	:	19.6.2017.

Nirmala Chauhan W/o Shri Hemant Kumar Verma R/o Verma Bhawan, Nav Bahar Shimla, HP. ..*Petitioner.*

VS.

The Managing Director, HP Agro Packaging Nigam Vihar Shimla-2 ..*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Raj Kumar, Advocate.

For respondent : Ex-parte.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"**Whether alleged termination of services of Smt. Nirmala Chauhan W/O Sh. Hemant Kumar Verma, R/O Verma Bhawan, Nav Bhaar, shimla171002, H.P. during December, 1994 by the Managing Director, H.P. Agro Packaging Industries Ltd., Shimla-171002, H.P., who had worked as Clerk on daily wages during July, 1994 to December, 1998 and has raised her industrial dispute after about 16 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of about 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"**

2. Briefly, the case of the petitioner is that initially she was engaged as clerk on daily wages basis in July, 1994 by the respondent and she worked as such till December, 1998 and completed more than 240 days in a calendar year but she was orally asked by the respondent that she need not to come for duties due to non-availability of work though number of junior persons namely Shana Devi and Smt. Uma Kanwar were allowed to continue and they are still in service with the respondent and had been given all kind of benefits. It is further stated that no notice as required under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) was issued to the petitioner and her services had been terminated without complying with the provisions of sections 25-F, 25-G and 25-H of the Act. It is also stated that the respondent had engaged many juniors to the petitioner and even engaged fresh persons. Against this back-drop a prayer has been made that she be reinstated in service with all the consequential service benefits including back-wages.

3. Before, I proceed further, it is important to mention here that vide order dated 12.4.2017, the respondent was proceeded against ex-parte.

4. The petitioner appeared into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A wherein she reiterated almost all the averments as made in the claim petition. She also tendered in evidence the receipt of courier Ex. PW-1/B and letters to MD mark PX-1 to mark PX-3.

5. Besides having heard the learned counsel for the petitioner, I have also gone through the record of the case carefully. The first question which arises for consideration before this Court is as to whether the reference is stale and highly belated. According to the petitioner herself, she was engaged as clerk on daily wages basis in July, 1994 and her services were terminated in December, 1998. Undisputedly, the petitioner had raised the industrial dispute after a period of about 16 years meaning thereby that she remained silent for about sixteen years. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

"19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

6. In **UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during December, 1998. In her affidavit by way of evidence Ex. PW-1/A, the petitioner deposed that for number of times she approached the respondent personally and wrote number of letters but she was not reinstated in service. She has also placed on record the representations which are mark PX-1 to mark PX-3. However, no credence can be attached to these representations as the same are not the original and these are only the copies and nothing can be inferred from the perusal of these representations that the same were duly received by the respondent. All these representations are of the years 1999/2000 and appear to be an afterthought. Moreover, as held by the Hon'ble Supreme Court that the mere fact that the workman was making repeated representations is not sufficient to explain the delay. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 16 years caused in seeking reference but the petitioner has failed to discharge her burden as such no relief can be granted to the petitioner. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

8. On merits, the claim of the petitioner is that she was engaged as clerk on daily wages basis in July, 1994 by the respondent and she worked as such till December, 1998 and had completed more than 240 days in a calendar year. However, the petitioner has failed to produce any

documentary evidence on record which could go to show that the petitioner had completed 240 working days in any calendar year and in twelve calendar months preceding her termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:-

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to place any documentary evidence on record that she had put in 240 days in twelve calendar months preceding her termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding her termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

9. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained her juniors who are still working as such the respondent had violated the principles of "last come first go". In her evidence by way of affidavit Ex. PW-1/A, the petitioner has stated that some junior persons namely Shana Devi, Smt. Uma Kanwar, Kuldeep Bhatia and Hem Raj etc. have been retained by the respondent, who are still working with the respondent. However, to prove this plea, no specific evidence has been led by the petitioner which could go to show that the persons named by the petitioner in her affidavit Ex. PW-1/A are junior to her and have been retained by the respondent. Moreover, our own Hon'ble High Court while deciding CWP no. 4515/2012 on 13.6.2012, titled as Suraj Mani Vs. HPSEB held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. In the instant case, since, the petitioner had raised the demand notice after a period of 16 years as such there is no question of consideration of equal treatment with the alleged juniors. The petitioner who slept for a long period of 16 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, she would not have kept silent for a period of 16 years.

10. Therefore, in view of my foregoing discussion, the reference is answered against the petitioner being stale and belated and as such no relief can be granted to her. Let a copy of this

award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 19th Day of June, 2017.

(PARVEEN)
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no.	:	60 of 2016.
Instituted on	:	1.1.2016.
Decided on	:	20.6.2017.

Mohan Lal S/o Late Sh. Tikkam Dass alias Jattu R/O Village Nehra, P.O. Rajhana, Tehsil & Distt. Shimla, H.P .. *Petitioner.*

VS.

The Executive Engineer, Division No.1, HPSEB, Charlie Villa, Shimla-171002 .. *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidtta, Advocate.
For respondent : Shri Sudhir Negi, Advocate vice Shri Ramakant Sharma, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"**Whether alleged termination of services of Sh. Mohan Lal S/o Late Sh. Tikkam Dass alias Jattu R/O Village Nehra, P.O. Rajhana, Tehsil & Distt. Shimla, H.P. during November, 1997 by the Executive Engineer, Division No.1, HPSEB, Charlie Villa, Shimla-171002, who had worked for 84 days only during 1997 and has raised his industrial dispute after about 16 years, allegedly without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 84 days only and delay of about 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"**

2. Briefly, the case of the petitioner is that *w.e.f.* 1.1.1997, he was engaged as beldar/worker by the respondent and worked continuously till 31.12.1997 and his services had been terminated without assigning any reason and without complying the mandatory provisions of Industrial Disputes Act, 1947 (hereinafter referred to as Act) as well as the Standing Orders of the HPSEB and after his termination, he visited the office of respondent number of times for his

reengagement but despite assurance given by the officials of the respondent, he was not re-engaged and even the officials of the board, refused to accept his representation and since, he was not reengaged, he was forced to file demand notice on 6.12.2013 and due to the adamant attitude of the respondent, the conciliation proceedings failed and on the report of the Conciliation Officer, his reference was not sent to this Court by the Labour Commissioner. It is further stated that the petitioner challenged the order passed by the Labour Commissioner before the Hon'ble High Court by filing CWP no. 168/2016 in which the Labour Commissioner was directed to consider the case of the petitioner and ultimately his case was sent to this Court for adjudication. It is also stated that neither any notice was issued to the petitioner nor any compensation was paid to him as required under the law which is clear cut violation of section 25-F of the Act as the work and conduct of the petitioner remained up to the satisfaction of the official of the respondent and even he had completed more than 240 days in a calendar year preceding his termination. That the respondent has also engaged new persons and the petitioner was not called back and even junior persons namely S/Shri Molak Ram, Dhan Bahadur, Prem Singh, Narender Singh, Om Prakash, Bhim Sen, Devi Ram and Mohinder *etc*. are still working with the respondent in violation of the provisions of last come first go. Against this back-drop a prayer has been made that the termination order of the petitioner passed in December, 1997 be quashed and set aside and the respondent be directed to reinstate the petitioner in service on the same post w.e.f. 1.1.1998 with all the consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the claim petition is false and vexatious in nature, maintainability, suppression of material facts, claim is barred by time, abandonment etc. On merits, it has been asserted that the petitioner was engaged as beldar on daily wages basis for specific work, who had worked for a brief spells since 26.8.1997 to 25.11.1997 for a period of 84 days and he had left the work of his own without any intimation to the respondent, hence, there is no violation of section 25-B, 25-F, 25-G and 25-H of the Act. It is further asserted that since, the petitioner had left the job at his own, hence, no notice under section 25-F of the Act was required to be issued to him and that no junior persons were engaged by the respondent expect those who were re-engaged on daily wages on specific judicial orders of competent court. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 6.1.2017.

1. Whether the termination of the services of petitioner by the respondent during November, 1997 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ..*OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled ..*OPP*.

3. Whether the claim petition is not maintainable as alleged? ..*OPR*.

4. Whether the petition is barred by time as alleged? ..*OPR*.

5. Whether the petitioner has abandoned the job as alleged?

6. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully including the written arguments filed by the petitioner.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Issue no.4 Yes.

Issue no.5 Decided accordingly.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings.

Issues no.1, 4 & 5.

8. Being interlinked and correlated, all these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent department and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, learned counsel for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondent who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of representations given to the respondent Ex. PW-1/B and Ex. PW-1/C and copy of demand notice Ex, PW-1/D. In crossexamination, he admitted that he was engaged in the month of September, 1997 as beldar and his services were terminated on 31.1.1998. He denied that he had not completed 240 days and that he had left the job at his own. He further denied that the persons named in para-7 of his affidavit Ex.PW-1/A were appointed as T-mate and not as beldars. He also denied that no junior person was retained by the Board and that no fresh hands were engaged after his termination. He admitted that he raised the industrial dispute after about 16 years. He further admitted that he had worked for 84 days during the year, 1997. He denied that his juniors were retained on the orders passed by the courts.

12. PW-2 Sh. Sanjay Kumar, Sr. Assistant Electric Division No.1 has stated that Mohinder Singh joined with the respondent as daily wager on 3.9.1992, Devi Ram on 4.9.1992, Mulak Ram 26.6.1993 and Prem Chand was engaged on 26.12.1998 and Prem Chand still working with the respondent. He further stated that the detail of worker engaged by the respondent is Ex.PW-2/A. In cross-examination, he admitted that neither any junior has been retained nor any person has been engaged by the respondent.

13. The respondent has examined one Shri Pratap Singh, Assistant Executive Engineer as RW-1, who deposed that the petitioner was engaged on 25.8.1997 and as per mandays chart Ex. RW-1/A, he had worked only for 84 days and no junior to the petitioner was retained by the Board except on the orders of the Court. In cross-examination, he denied that the petitioner was engaged on 1.1.1997 and he worked continuously till 31.12.1997. He admitted that neither any notice was issued to the petitioner nor any compensation was paid to him and that no notice was issued to him for resumption of duties. He denied that fresh hands were engaged by the Board after August, 1997. He admitted that after 31.12.1997, fresh hands have been engaged as per the criteria fixed by the Government and some of them are still working with the Board. He had no knowledge as to whether the petitioner had submitted representations Ex. PW-1/B and Ex. PW1/ C to the Board after his termination. He admitted that Shri Mohinder Singh Joined on 3.9.1992,Devi Ram joined on 4.9.1992, Molak Ram joined on 26.6.1993 and Prem Chand joined on 26.12.1998 as daily wagers and they are still working with the Board but volunteered that all of them have been engaged on the orders of the Court.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 84 days as daily waged beldar with the respondent. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. In this respect, he has placed reliance upon the decision of Hon'ble Apex Court reported in ***(1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing – cum- processing Service Society Limited and Another.***

15. Undisputedly, the petitioner had raised his industrial dispute after a period of about 16 years. According to the petitioner he was terminated in the month of December, 1997. The demand notice was raised by the petitioner on 6.12.2013 and even he has admitted in crossexamination that he had raised the industrial dispute after about 16 years. Therefore, the position of law in respect of a stale claim is required to be seen. In ***Ajayab Singh Vs. Sirhind Co-operative Marketing –cum-processing Service Society Limited and Another (supra),*** the services of the workman were terminated on 16.7.1974. He had raised the demand notice on 18.12.1981 and the reference was sent to the Labour Court on 19.3.1982. Thus, there was a delay of about seven years in seeking the reference. The Hon'ble Supreme Court has held that Article 137 of the Limitation Act, 1963 is not applicable to the proceedings of the reference and the relief under the Industrial Disputes cannot be denied to the workman merely on the ground of delay. The relevant portion of the aforesaid judgment is reproduced as under:

> ***"18. It follows, therefore, that the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"***

On facts, it was held that the plea of delay was not raised before the Labour Court and if that plea had been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an early stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. It was further held that the workman was justified in complaining that in the absence of any plea on behalf of the management and any evidence regarding delay, he could not be deprived of the benefits under the Act merely on the technicalities of law.

16. **In Assistant Executive Engineer, Karnataka Vs. Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has considered the judgment of Ajayab Singh's case (supra) and held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh vs. Sirhind Coop. Marketing-cum- Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same. It was held that in such a situation the decision of ***Ajayab Singh's case*** *is not applicable.*

17. In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91, the employee was discontinued from service *w.e.f.* 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages relying upon the decision of the Hon'ble Apex Court in case of ***Ajayab Singh (supra)***. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The Hon'ble Supreme Court has considered its earlier judgment in the case of Ajayab Singh (Supra). The relevant portion of the aforesaid judgment is reproduced as under:

13. "In Ajaib Singh (supra), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (supra), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of Ajaib Singh (supra) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15" In Balbir Singh vs. Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (supra), this Court observed :

> 5." The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh v. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. ((1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38).
>
> 6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka vs. Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

> "6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs*. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the

dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (supra), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (supra), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

18. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. Babu Ram, the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

19. In Assistant Engineer, CAD Kota Vs. Dhan Kunwar reported in (2006) 5 SCC 481, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

> "9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

20. In **UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

> " 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

21. **In (2009) 13 SCC 746, State of Karnataka Vs. Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

> "9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

22. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to

explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations is not sufficient to explain the delay.

23. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during December, 1997 and he raised the demand notice on 6.12.2013 *i.e* after about a period of 16 years. In his affidavit by way of evidence Ex. PW-1/A, the petitioner deposed that he visited the office of respondent number of times after his illegal termination for his reinstatement but despite assurance given by the officials of the respondent, he was not reinstated. However, except for his bald statement there is no other evidence on record to suggest as to when he visited the respondent for his reinstatement. The petitioner also deposed that he had given representations to the respondent Board but the officials refused to accept his representations on one pretext or the other and he has also placed on record two of his representations which are Ex. PW-1/B and Ex. PW-1/C. However, no credence can be attached to these representations as the same are only the photocopies and nothing can be inferred from the perusal of these representations that the same were refused to be accepted by the officials of the respondent. Both the representations appear to be an afterthought. Moreover, as held by the Hon'ble Supreme Court the fact that the workman was making repeated representations is not sufficient to explain the delay. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The decision of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner in Ajayab Singh's case was rendered in the facts and circumstances of that case and the ratio of the said judgment cannot be made applicable in the facts and circumstances of the present case. In Ajayab Singh's case the plea of delay was not raised before the Labour Court whereas the plea of delay has been raised in the present case by the respondent at the very first instance in the reply filed before this Court and the petitioner was well within a position to show the circumstances preventing him in approaching the Court at an early stage. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 16 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

24. On merits, the claim of the petitioner is that he was engaged as daily waged beldar by the respondent on 1.1.1997 but he has failed to produce any record which could go to show that he was actually engaged by the respondent on 1.1.1997. From the mandays chart Ex. RW-1/A, it is clear that the petitioner was engaged as daily waged beldar by the respondent on 26.8.1997 and he worked as such till 25.11.1997. The petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. The perusal of mandays chart Ex. RW-1/A goes to show that the petitioner had worked only for 84 days with the respondent. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat*** V/s ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:-

"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

25. The learned counsel for the petitioner next contended that the respondent has taken the plea of abandonment in their reply but it has totally failed to establish on record by placing any document on record and also failed to prove any enquiry held against the petitioner. He further submitted that the plea of abandonment taken by the respondent has not been proved on record and in this respect he has also placed reliance upon judgments reported **in 2014 LLR 696 titled as M/s Economic Transport Organization Vs. Dharmendra Mishra and other** rendered by the Hon'ble High Court of Delhi and judgment of our own Hon'ble High Court reported in **Latest HLJ 2007 (HP) 903, titled as State of Himachal Pradesh and others Vs. Bhatag Ram and another** As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has been held by the Hon'ble Supreme Court that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondent to lead evidence and to bring witnesses or to place documents on record to prove after 16 years that the petitioner had abandoned the job at his own. Moreover, the petitioner had only worked for 84 days during his entire service and in such a situation the question of holding an enquiry to prove the plea of abandonment does not arise at all. Hence, the ratio of the judgments relied upon by the learned counsel for the petitioner have no application in the facts and circumstances of the present case where the reference is proved to be stale.

26. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors who are still working as such the respondent had violated the principles of "last come first go". In his evidence by way of affidavit Ex. PW-1/A, the petitioner has stated that some junior persons have been retained by the respondent board who are still working with the respondent. However, PW-2 has specifically deposed that Mohinder Singh was engaged on 3.9.1992, Devi Ram on 4.9.1992 and Molak Ram on 26.6.1993 as daily wagers. Since, the petitioner was allegedly engaged on 1.1.1997, therefore, it cannot be said that the aforesaid persons were junior to the petitioner. The petitioner has failed to prove on record that any junior to him has been retained. PW-2 further deposed that Prem Chand was engaged on 26.12.1998 as daily wager. However, RW-1 specifically deposed that he was engaged on the basis of the orders of the Court. Our own Hon'ble High Court while deciding CWP

no. 4515/2012 on 13.6.2012, titled as Suraj Mani Vs. HPSEB held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. In the instant case, since, the petitioner had raised the demand notice after a period of 16 years as such there is no question of consideration of equal treatment with the said Prem Chand, who had been engaged on 26.12.1998 that too upon the orders of the Court. The petitioner who slept for a long period of 16 years is not entitled to claim any relief on the ground of equal treatment. The judgments cited by the learned counsel for the petitioner cannot be made applicable to the facts and circumstances of the present case in view of the fact that the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 16 years. Accordingly, all these issues are decided in favour of the respondent and against the petitioner.

Issue no.2.

28. Since, the petitioner has failed to prove issues no.1, 4 & 5, above, this issue becomes redundant.

Issue no.3.

29. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 20th Day of June, 2017.

(PARVEEN)
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-,
Labour Court, Shimla.

Raj Kumar & Ors V/S M/S Emmbros Auto Comp Ltd.

Ref. No. 58/2011
23.06.2017

Present: Petitoners with Sh. J.C. Bhardwaj Ar. Sh. Rajiv Sharma, Advocate with Shri Harish Mehta, Chairman of respondents Company.

At this stage, it has been stated by the petitioners S/Sh. Surinder Singh, Hans Raj, Vinay kumar, karam Singh and Vikas Sharma and Sh. J.C. Bhardwaj, Authorized Representative on behalf of the legal heirs of deceased Raj Kumar and Brahm Dass that they have entered into a

compromise with the respondent Management and as per the compromise the legal heirs of petitioner No. 1 Shri Raj Kumar, legal heirs of petitioner No. 7 Shr. Brahm Dass, Surinder Singh, Hans Raj, Karam Singh and Vikas Sharma are ready to accept a sum of Rs. 1,50,000/- (Rs. One lakh fifty thousand only) whereas petitioner Shri Vinay kumar is ready to accept Rs. 1,00,000/- (Rs. One lakh only) as their full and final legal dues from the respondent management with respect to their claim arising out of reference No. 58 of 2011 and they shall have no claim against the respondent hereinafter with respect to their service benefits from the respondent in any manner. All the petitioners have prayed that the reference petition be decided accordingly. To this effect the statements of Shri J.C. Bhardwaj, AR, petitioner Surinder Singh, petitioner Vinay Kumar, petitioner Karam Singh, petitioner Hans Raj and petitioner Vikas Sharma recorded separately.

Vide separate statements recorded today, it has been stated by Sh. Harish Mehta, Chairman of respondent company that the respondent is ready and willing to pay the aforesaid amount to the petitioners as their full & final legal dues with respect to their claim arising out of reference No. 58 of 2011. He further stated that the said amount shall be paid to the petitioners within a period of one month from today through demand draft.

Therefore, keeping in view of the aforesaid statements of the parties, I am of the view that a lawful compromise has been effected between the parties. Hence, the reference sent by the appropriate government for adjudication is answered in terms of the aforesaid statements of the parties, which shall form a part of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after, completion, be consigned to record.

(SUSHIL KUKREJA),
Presiding Judge,
H.P.Industrial Tribunal-cum-,
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no.	:	41 of 2014.
Instituted on	:	20.5.2014.
Decided on	:	29.6.2017.

Kanta Devi W/o late Shri Umachand R/o Village Magri, P.O Karsog, Tehsil Kasrsog, District Mandi, HP. .. *Petitioner.*

VS.

1. State of HP through Secretary Khadi and Village Industries Board.

2. The Secretary, Himachal Khadi Ashram Green Filed Building near ICE Skating Ringh Lakkar Bazar Shimla.

3. The Manager Shri Suresh Sahrma Hiamchal Khadi, Ashram The Mall Shimla.

.. *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Chava, Advocate.

For respondent : Shri Vikas Shyam, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether termination of the services of Smt. Kanta Devi, W/O Late Shri Uma Chand, R/O Village Magri, P.O. Karsog, Tehsil Karsog, District Mandi, H.P. w.e.f. 06-06-2013 by the Secretary, Himachal Khadi Ashram, Green Field Building, Near Ice Skating Ring, Lakkar Bazar, Shimla, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In nutshell the case of the petitioner is that on 18.4.2011, she had been engaged as salesman at the shop complex situated at Mall Road Shimla under the name and style of Himachal Khadi Ashram Shimla and remained working as such till 5.6.2013 and she was getting ₹ 4000/- per month as salary. It is further stated that the petitioner used to sell articles displayed for sale and also used to maintain the stock register. She worked in the shop and office with sincerity and honesty but the respondents started humiliating her with a view to retrench her services and as such the respondent refused to mark her presence after 1.6.2013 despite her being present on duty upto 5.6.2013. It is further stated that the petitioner was working since 18.4.2011 whereas the respondent no.2 has allowed three junior workers namely Smt. Pushpa, Smt. Kamla and Smt. Asha and some juniors to her have been regularized by the respondents whereas the services of the petitioner have been retrenched in violation of the Industrial Dispute 1947 (hereinafter referred to as Act). Against this back-drop a prayer has been made that she be reinstated in service along-with all consequential benefits including seniority, regularization and payment of arrears with interest @ 15%.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, estoppel and that this Court has no jurisdiction to try the claim petition. On merits, it has been denied that the petitioner was working as salesman with the respondents. It is submitted that the petitioner was appointed verbally for part time period with the clear understating that her services would be discontinued at any time and no service conditions were fixed at the time of her appointment. It is denied that the petitioner used to sell articles displayed for sale and was maintaining stock register and that at the end of the day sales summary was prepared by her and the cash was handed over to the respondents. It is asserted that the petitioner was working only as helper and used to pass articles from one place to other place and some time used to clean the counter, shelves etc. and even from the date of her appointment, the petitioner never marked her presence in the attendance register. It is further asserted that Smt. Pushpa, Kamla and Asha have been appointed on compassionate ground as their husbands had died during the job, hence, the petitioner cannot claim at par with the aforesaid workers and even Shri Ashwani Kumar is not under the employment of respondents. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed on 15.9.2015.

7. Whether the termination of the services of Smt. Kanta Devi without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified?

OPP.....

8. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? *OPP*.....

9. Whether the petition is not maintainable as alleged? *OPR*.....

10. Whether the petitioner is estopped from filing the present petition due to her own acts and deeds as alleged? *OPR*.....

11. Whether this Tribunal has no jurisdiction to try the present petition as alleged?

12. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Issue no.4	No.
Issue no.5	No.
Relief.	Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings.

Issues no.1,

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving her any notice as required under section 25-F of the Act especially when she had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, learned counsel for the respondents contended that the petitioner was appointed as helper on part time basis with the understanding that her services would be discontinued at any time verbally and that she had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondents and the persons named by the petitioner were engaged on compassionate grounds as their husbands had died during service, hence, he is not entitled to any relief.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A wherein she reiterated almost all the averments as stated in

the claim petition. In cross-examination, she admitted that there is no appointment letter regarding her appointment as salesman at the shop situated at Shimla. She further admitted that no attendance was ever marked by her. She denied that she had been verbally/orally appointed as a part time worker purely on temporary basis for time being. She further denied that she had been working as helper only and used to pass articles from one place to another and that she also used to clean the counter and shelf etc. She admitted that husbands of Smt. Pushpa, Kamla and Asha Devi had worked with the respondents and they (husbands) had died during the job. She also admitted that all the aforesaid three females have been appointed on compassionate grounds. She denied that Ashwani Kumar is not under the employment of respondents. She further denied that she was only part time employee.

11. PW-2 Sh. Surya Dutt, Manager has brought the salary registers the relevant extracts of which are Ex. PW-2/A to Ex. PW-2/F and stated that Kant Devi was paid the salary *w.e.f.* Aril, 2011 to November, 2012. In cross-examination, he admitted that the petitioner was not the regular employee of the respondent and that she was engaged on part time basis and she was working as helper at counter.

12. The respondent has examined one Shri Kamal Goel, Salesman as RW-1, who deposed that vide authority letter Ex. RW-1/A, he was authorized to depose before this Court. He further stated that there are 14 regular employees at Khadi Ashram, The Mall Shimla who are appointed by the Secretary Himachal Khadi Ashram by giving them appointment letters. The petitioner was working on temporary basis at their show room at The Mall Shimla and she being the part time employee was working only for one and half hour per day and she used to clean the counter and pass over the files. He also stated that Pushpa, Kamla and Asha have been given appointment on compassionate ground. In cross-examination, he denied that the services of the petitioner were illegally terminated on 5.6.2013 and that fresh hands have been engaged after the termination of the petitioner.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged on temporary basis as a part time worker by the respondents at their show room at The Mall Shimla. The case of the petitioner is that she had worked *w.e.f.* 18.4.2011 till 5.6.2013 continuously but she has failed to produce on record any documentary evidence which could go to show that she had completed 240 working days in twelve calendar months preceding her termination. There is no material on record which could show that the petitioner has completed 240 working days in any calendar year and in twelve calendar months preceding her termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

14. In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apartn from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his***

service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, the petitioner has failed to prove on record any evidence that she had put in 240 days in any calendar year and in twelve calendar months preceding her termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

15. It is also the case of the petitioner that the junior persons to her namely Pushpa, Kamla and Asha have been appointed in violation of the provisions of sections 25-G and 25-H of the Act. However, RW-1 has specifically deposed that the aforesaid three persons were appointed on compassionate grounds as their husbands had died during the service. Therefore, the petitioner cannot claim equal treatment with the aforesaid persons who had been appointed on compassionate grounds. Hence, no protection of sections 25-G and 25-H can be granted to the petitioner.

16. The further case of the petitioner is that she had been working as a salesman at the show room of the respondent at The Mall Shimla *w.e.f.* 18.4.2011 till 5.6.2013 at the gross salary of ₹ 4000/- per month. However, to substantiate her case no evidence has been produced on record by the petitioner. In cross-examination, she admitted that no appointment letter was issued to her regarding her appointment as salesman at the shop at The Mall Shimla. She also admitted that no attendance was ever marked by her. Though, she stated that she used to put her signatures on cash memos and sales register. However, she admitted that she had not annexed any record regarding her signatures on cash memos and sales register. The initial burden was upon the petitioner to establish by leading cogent evidence on record that she had been engaged as a salesman. However, she has failed to discharge her burden by producing any documentary evidence on record in this respect. Therefore, in the absence of any evidence on record, it cannot be said that the petitioner was working as salesman at the show room of the respondent at The Mall Shimla under the name and style Himachal Khadi Ashram. The perusal of the record shows that the services of the petitioner had been engaged by the respondents on part time basis. In ***2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. V. Y.D Deshpande &Ors, it has been held*** that:—

"The appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.

It was also held in ***(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr.*** that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post.

17. In the instant case, admittedly, the petitioner was engaged purely on part time/ temporary basis for a specific period. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can safely be concluded that the petitioner had no right to the post and she was not retrenched within the meaning of section 2(oo) of the Industrial Disputes Act, 1947. The case of the petitioner falls within the exception as provided under section 2(oo)(bb) of the Act as such the provisions of Chapter V-A of the Act would not apply.

18. Therefore, in view of the law laid down supra and also in view of my foregoing discussion, it can safely be held that the termination of the services of the petitioner *w.e.f.* 6.6.2013 is not illegal and unjustified. Consequently, this issue is decided in favour of the respondents and against the petitioner.

Issue no.2.

19. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue no.3 & 5.

20. In support of these issues, no evidence was led by the respondents which could go to show that as to how the petition is not maintainable and that this Tribunal has no jurisdiction to try the present petition. Moreover, the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication, hence, I find nothing wrong with this petition which is perfectly maintainable and this Court has got the jurisdiction to try the present petition. Accordingly, both these issues are decided in favour of the petitioner and against the respondents.

Issue no.4.

21. During the course of arguments, this issue was not pressed by the learned counsel for the respondents. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issue no.1 to 5, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered against the petitioner and in favour of respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 29th Day of June, 2017.

(PRAVEEN),
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM- LABOUR COURT, SHIMLA, (H.P)

Ref. No.	:	33 of 2016.
Instituted on.	:	11.4.2016.
Decided on	:	30.6.2017.

Shayamanand S/o Shri Dila Ram R/o Village Alu Randal, P.O Rampur, Tehsil Nirmand, District Shimla, HP. ..*Petitioner.*

Vs.

1. Himachal Road Transport Corporation, Shimla, H.P through its Managing Director.

2. The Regional manager, Himachal Road Transport Corporation, Rampur Bushehr, District Shimla, HP. . .*Respondents*.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Manohar Lal Sharma, Advocate.

For respondent : Shri Dheeraj Kanwar, Advocate.0

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether alleged termination of services of Shri Shyamanand s/o Shri Dila Ram, r/o Village Alu Randal, P.O. Rampur, Tehsil Nirmand, District Kullu, H.P. w.e.f. 18.4.2001 by the (1) The Managing Director, Himachal Pradesh Transport Corporation, H.P. Shimla. (2) Regional Manager, H.R.T.C. Rampur, District Shimla, H.P., who had worked as Motor Mechanic only for 191 days during the year, 2000 and has raised his industrial dispute after more than 12 years vide demand notice dated 25.9.2013, without complying the provisions of the Industrial disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 191 days during the year, 2000 and delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above exworker is entitled to from the above employer/management?"

2. In nutshell, the case of the petitioner is that after doing the course from industrial training institute Rampur Bushehr, District Shimla in the trade of mechanic motor vehicle, the petitioner was initially engaged by the respondent as motor mechanic (helper) on 6.6.2000 for 89 days and after the completion of 89 days he was re-engaged for further 89 days and this process remain continued upto 17.4.2001 when his services had been terminated orally without issuing any notice. After obtaining information under RTI, the petitioner came to know that the respondents have appointed many persons as motor mechanics on piecemeal basis after the termination of his services and now their services have been brought on contract basis, hence, the termination of the services of the petitioner is totally illegal and the posts are still lying vacant with the respondent and the petitioner is ready and willing to work with respondent and that he had completed 240 days in each calendar year and as such his termination is in violation of the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) as neither any notice was given to him nor he was paid compensation and that before terminating his services, no opportunity was afforded to him. That even giving fictional breaks after the completion of 89 days amounts to unfair labour practice on the part of the respondent. It is also stated that after the termination of the services of the petitioner many persons have been appointed against the post of motor mechanic, hence, the action on the part of the respondents is in violation of section 25-G and 25-H of the Act. Against this back-drop a prayer has been made for reinstatement along-with all consequential benefits including back-wages by quashing order dated 17.4.2001.

3. By filing reply, the respondents contested the claim of the petitioner wherein it has been asserted that the petitioner was engaged only on day to day basis on the leave vacancy of regular staff during 2000 *w.e.f.* 6.6.2000 in motor mechanic trade on a monthly remuneration of

₹ 2000/- but he was not engaged for 89 days. It is denied that the petitioner was reengaged after 89 days but it is asserted that he left the job without giving any notice to the department. It is further asserted that the petitioner had appeared in the interview for the post of motor mechanic but he could not qualify due to less marks. It is denied that the posts are still lying vacant with the respondent and that he had completed 240 days in each calendar year. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 2.11.2016.

1. Whether the termination of the services of the petitioner *w.e.f.* 18.4.2001 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ..*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

3. Relief.

6. Besides having heard the Learned Counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Relief.	Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings.

Issue no.1.

8. The learned counsel for the petitioner contended that the petitioner was engaged as a motor mechanic for a period of 89 days on 6.6.2000 and the period of 89 days was extended from time to time after a gap of 89 days till 17.4.2001 and thereafter, the services of the petitioner had been terminated orally without assigning any reason and without the compliance of mandatory provisions of law. He also contended that junior persons to the petitioner have been retained. He further contended that since the petitioner had completed 240 days in preceding twelve calendar months, hence, his termination without complying with the provisions of the Act is illegal.

9. On the other hand, Ld. Counsel for the respondent contended that the since the petitioner had been engaged for specific work on day to day basis against the leave vacancy of regular staff on a monthly remuneration of ₹ 2000/-, hence, he is not entitled to any relief. He further contended that the claim of the petitioner is highly belated and stale.

10. The petitioner while appearing into the witness box as PW-1 has tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated almost all the averments as made in the claim

petition. In cross-examination he denied that before appearing in the interview, he also worked on leave vacancy with respondent and that he was conveyed by the HRTC about nonselection in the interview. He further denied that his appointment was on co-terminus basis against leave vacancy. He also denied that he had not completed more than 89 days and he used to proceed on leave. He admitted that he remained under treatment for longer period initially at Rampur and thereafter at IGMC Shimla and then at PGI Chandigarh. He denied that he had not completed 240 days in any calendar year. He admitted that after his termination, he had not made any representation for his re-engagement to respondent and that he had worked only for 191 days in the year 2000.

11. On the other hand, the respondent examined RW-1 Shri Praveen Sharma, Senior Assistant, who deposed that the petitioner was engaged as motor mechanic against the leave vacancy of regular staff w.e.f. 6.6.2000 to 17.4.2001 at a monthly salary of ₹ 2000 and on 17.4.2001, he left the job at his own without any intimation and on 26.5.2015, he applied for piece meal worker purely on out-sourcing basis but he could not qualify the interview and thereafter, he raised the industrial dispute and vide order dated 5.5.2015 Ex. RW-1/A, the dispute was referred to this Court for adjudication being raised after more than 12 years. In cross-examination, he denied that the petitioner was engaged against the leave vacancy and that the petitioner had not left the job at his own. He admitted that no notice was issued to the petitioner for resumption of his duties. He admitted that Ex. PX-1 is the order passed by the Hon'ble High Court of HP in CWP no. 4160/2015. He denied that the petitioner had completed 240 days in a calendar year.

12. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent as motor mechanic only for 191 days and raised his industrial dispute after more than 12 years vide demand notice dated 25.9.2013. Now, the first question which arises for consideration before this Court is as to whether the reference is stale and highly belated. Undisputedly, the petitioner had raised the industrial dispute after a period of about 12 years meaning thereby that he remained silent for about twelve years. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

13. In **UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

> " 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings,

including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1996. The lack of diligence on the part of the respondent is apparent. "

Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated *w.e.f.* 18.4.2001. There is nothing on record which could go to show that after his termination, the petitioner approached the respondent for his reinstatement. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 12 years caused in seeking reference but the petitioner has failed to discharge his burden as such no relief can be granted to the petitioner. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

14. On merits, also it has become clear that the petitioner was engaged *w.e.f.* 6.6.2000 in motor mechanic trade on day to day basis. The petitioner himself has stated in his affidavit Ex. PW-1/A that initially he was engaged for 89 days and thereafter again after the completion of 89 days, he was re-engaged for further 89 days and the said process continued upto 17.4.2001. Therefore, in view of the admission of the petitioner himself, it cannot be said that the petitioner was engaged by the respondent against a regular post. RW-1 specifically stated in his deposition before this Court that the petitioner had worked as a motor mechanic against the leave vacancy of regular staff w.e.f. 6.6.2000 on a monthly salary of ₹ 2000/- and in cross-examination, he specifically stated that the petitioner was not a regular worker. In ***2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. V. Y.D Deshpande &Ors, it has been held*** that:—

"The appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.

It was also held in ***(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr.*** that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post.

15. In the instant case also admittedly, the petitioner was engaged on day to day basis against the leave vacancy and was not appointed to any regular post as such he had no right to the post in view of the law laid down by the Hon'ble Apex Court.

16. The further case of the petitioner is that after his termination, the respondent had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondent as such the respondent had violated the principles of "last come first go". However,

no evidence has been led by the petitioner to prove that the persons junior to him have been retained and fresh persons have been engaged. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G andb 25-H of the Act. Consequently, the petitioner has failed to prove that his services were terminated by the respondent in violation of the provisions of the Act and as such the issue is decided in favour of the respondent and against the petitioner.

Issue no.2.

17. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open Court today on this 30th Day of June, 2017.

(PARVEEN),
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM- LABOUR COURT, SHIMLA, (H.P)

Ref. No.	:	78 of 2015.
Instituted on.	:	19.11.2015.
Decided on	:	30.6.2017.

Dalesh Kumar S/o Shri Manphool Singh R/o House no. 145, Manphool NIwas, Ward no.13, Cleangaon, Tehsil & District Solan, HP. . . *Petitioner.*

Vs.

3. Himachal Road Transport Corporation, Shimla, H.P through its Managing Director.

4. The Regional manager, Himachal Road Transport Corporation, Solan, District Solan, HP. . .*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Manohar Lal Sharma, Advocate.

For respondent : Shri Dheeraj Kanwar, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of services of Sh. Dalesh Kumar s/o Sh. Manphool Singh, r/o H.No. 145, Manphool Niwas, Ward No.13, Cleangaon, Tehsil & Distt. Solan, H.P. during October, 2012 by i) The Managing Director, HRTC, Shimla-3, H.P. ii) The Regional Manager, HRTC Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman is legal and justified? If not, to what amount of back wages, past service benefits, seniority, compensation and other service benefits the above aggrieved workman is entitled to from the above employer/management?"

2. In nutshell, the case of the petitioner is that on 12.5.1999, he was engaged as sweeper by the respondent on monthly remuneration of ₹ 1000/- on contract basis and he was working honestly and to the entire satisfaction of his superiors and even after the date of his appointment, one or two days notional/fictional breaks were given to him and in the month of May, 2000, his salary was enhanced from ₹ 1000/- to ₹ 2000/- per month. It is further stated that the petitioner was working with respondent no.2 continuously upto October, 2012 but his salary w.e.f. June, 2012 to October, 2012 was not given to him by saying that the same would be paid to him after necessary sanction from the competent authority. It is also stated that the services of the petitioner were terminated w.e.f. October, 2012 when he requested to regularize his services. That the posts are still lying vacant with the respondent corporation and the petitioner is ready and willing to work and that he had completed 240 days in each calendar year, hence, his termination without complying with the provisions of section 25-F of the Industrial Disputes act, 1947 (hereinafter referred as to Act) is illegal as no notice or compensation was given to him before terminating his services. Against this back-drop a prayer has been made that the services of the petitioner be reinstated along-with all the consequential service benefits including back-wages, seniority, regularization and salary for four months w.e.f. June, 2012 to October, 2012 by quashing order dated October, 2012.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been raised qua maintainability, cause of action, that the petitioner has no locus standi to file the present petition etc. On merits it has been denied that the petitioner worked continuously upto June, 2012. It is asserted that the petitioner himself used to take a break from service for 2 to 3 days every month. It is also asserted that the respondent had floated a tender in the year, 2003 and the same was allotted to the petitioner for sweeping and cleaning the unit @ monthly sum of ₹ 2000/- for a period of 11 months and after 31.5.2012, the petitioner stopped sending his employee engaged for sweeping the premises of respondents. The recommendations of Board of Directors is not applicable in the case of the petitioner as he had left the service and assumed the charge of a contractor by participating in the tender and since the petitioner participated in the tender floated by the respondents, hence, the question of termination does not arise. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 5.8.2016.

4. Whether the termination of the services of the petitioner during October, 2012 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ..*OPP.*

5. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

6. Whether the petition is not maintainable? ..*OPR.*

7. Relief.

6. Besides having heard the Learned Counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no 3	No.
Relief.	Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings.

Issue no.1.

8. The learned counsel for the petitioner contended that the petitioner being safai karmachari having been engaged by the respondents on 12.5.1999 and his termination w.e.f. October, 2012 especially when he had completed more than 240 days in every calendar year without complying with the provisions of the Act is illegal and unjustified.

9. On the other hand, Ld. Counsel for the respondents contended that the petitioner was initially engaged as a part time sweeper by the respondents but thereafter he had worked as a contractor with effect from the year, 2003 onwards for sweeping and cleaning the premises of the respondent as such he is not entitled to any relief.

10. The petitioner while appearing into the witness box as PW-1 has tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he stated that initially he was engaged as a part time sweeper by the respondents on 12.5.1999 and he used to work for 8 hours per day as a daily wager and he was getting wages @ ₹ 2000/- per month. He denied that as a part time worker, he used to attend the office irregularly and that he participated in the tender floated by the respondents in the year, 2012 for outsourcing the job of sweeper. He further denied that the tender was given to him by the respondents and he used to work as contractor. He also denied that he had worked for less than 90 days at a stretch and that his services were never terminated and he left the job at his own. He denied that he had never completed 240 days in any calendar year.

11. On the other hand, the respondent examined RW-1 Shri Bhagat Ram, Superintendent, who deposed that the petitioner was working as safai karamchari and he used to work 2 to 3 hours per day and they used to pay him ` 1000/- initially and thereafter the wages were enhanced to ₹ 2000/- per month and he used to do his duties regularly. He further deposed that as per Ex. RW-1/A, the petitioner had worked as contractor w.e.f. the year, 2003 and every time the contract period was for 11 months which used to be renewed from time to time. The petitioner used to do the work himself and prior to the year, 2003 wages to him were paid from contingency funds. In cross-examination, he admitted that the name of the petitioner was recommended for regularization by the committee. He denied that the services of the petitioner were terminated when he made a request for his regularization in October, 2012. He further denied that the salary of the petitioner

was withheld from June, 2012 to October, 2012. He also denied that the petitioner was an employee and not a contractor.

12. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that initially the petitioner was engaged on 12.5.1999 as a part time sweeper by the respondents but thereafter he had worked as a contractor *w.e.f.* the year, 2003 for sweeping and cleaning the premises of the respondents for a period of eleven months and the said contract was continuously renewed from time to time. The copies of the agreements have been tendered in evidence as Ex. RW-1/A. The perusal of the aforesaid agreements shows that the petitioner had signed the agreements as a contractor. No evidence to the contrary has been placed on record by the petitioner. It is not the case of the petitioner that he has not signed the agreements Ex. RW-1/A. Therefore, the perusal of the entire evidence on record shows that the work of sweeping and cleaning of the premises had been awarded to the petitioner by the respondents from the year, 2003 onwards and the contract was being renewed from time to time as such it cannot be said that the petitioner was engaged on any regular post by the respondents.

13. Hence, in view of the entire evidence on record, it can safely be concluded that the petitioner was working as a contractor and his services were never terminated by the respondents. Hence, it cannot be said that the termination of the services of the petitioner during October, 2012 by the respondents is illegal and unjustified. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue no. 2.

14. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

Issue no. 3.

15. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open Court today on this 30th Day of June, 2017.

(PARVEEN),
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM- LABOUR COURT, SHIMLA, (H.P)

Ref. No. : 72 of 2014.
Instituted on. : 4.9.2014.
Decided on : 30.6.2017.

Anil Kumar S/o Shri Bhadur Singh R/o Village Daka, P.O Kando Bhatnol, Tehsil Shillai, District Sirmour, HP. ..*Petitioner*.

Vs.

Director-cum-Chairman (Board of Ayurveda and Unani System of Medicines, HP) having its office at Block no.26, SDA Complex, Kasumpati Shimla, 171009. ..*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Sandeep Dutta, Advocate.

For respondent : Shri Swaran Sharma, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of the services of Shri Anil Kumar, s/o Shri Bhadur Singh, r/o Village Daka, P.O. Kando Bhatnol, Tehsil Shillai, District Sirmour, H.P. w.e.f. 01-06-2013 by the (i) Director of Ayurveda Block No.26, SDA Complex Kasumpti, Shimla-9, H. P. (ii) Registrar, Board of Ayurveda and Unani System of Medicines, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that he was engaged on contract basis for disposal of pending works of registration/renewal of Ayurvedic Medical Officer/Ayurvedic Pharmacist vide office order dated 29.7.2011 initially for two months and after which the contract was supposed to be seized and thereafter the services of the petitioner were renewed by the respondent and he worked till 30.9.2011 and then a short break was given to him and again he was engaged to work in the office of respondent w.e.f. 1.11.2011 and he continued as such till 31.5.2013. It is further stated that vide letter dated 21.12.2011, the respondent requested the Secretary Ayurveda for the necessary approval of Government to fill up two posts of clerks on outsource basis and the Under Secretary vide its letter dated 31.1.2012, allowed one post of Data Operator on outsource basis. It is also stated that the petitioner had worked continuously without any break for more than 240 days in one calendar year and that to the utter shock and surprise of the petitioner, on 1.6.2013, his services were discontinued orally without issuing any notice, chargesheet, conducting enquiry, hence, the dismissal of his services is in violation of section 25 of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). Against this back-drop a prayer has been made that the services of the petitioner be re-engaged with all consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petitioner has not come to this Court with clean hands, estoppel, that the reference is without jurisdiction, reference is bad for non-joinder of

necessary parties and that there is no relation of master and servant between the parties. On merits, it has been asserted that the engagement of the petitioner was purely on contract basis for a specific period and for a specific work and his services were engaged just to streamline the pending work of the board without following the due process of law and procedure and his services were not engaged in accordance with the R&P Rules. It is further asserted that the petitioner was engaged by the Board as a stop gap arrangement. It is denied that the petitioner worked upto 31.5.2013 without any break. It is also asserted that vide letter dated 21.11.2011, the board took up the matter with the government and sought permission for filling up the required posts in the Board and the Government vide letter dated 31.1.2012 gave its approval for filling of one post of data operator on outsource basis with the condition that the Board will meet its expenses. The government in view of the illegality and irregularities in the appointment of the petitioner, directed the Board to issue show cause notice to him but before issuance of show cause notice w.e.f. 1.6.2013, the petitioner himself is absent from his duties. It is denied that the petitioner worked continuously for 240 days. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 18.1.2016.

1. Whether the termination of the services of the petitioner w.e.f. 1.6.2013 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ..*OPP*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

3. Whether this petition is not maintainable as alleged? ..*OPR.*

4. Whether the petition is bad for non-joinder of necessary parties as alleged? ..*OPR.*

5. Relief.

6. Besides having heard the Learned Counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Issue no.4	Not pressed.
Relief.	Reference answered in favour of the respondent andb against the petitioner per operative part of award.

Reasons for findings.

Issue no.1.

8. The learned counsel for the petitioner contended that the services of the petitioner were engaged by the respondent on contract basis for disposal of works of registration/renewal of

Ayurvedic Medical Officer/Ayurvedic Pharmacist w.e.f. 29.7.2011 initially for two months and he continued as such till 31.5.2013 and thereafter his services were orally terminated without issuing any notice and without paying any compensation. He further contended that since the petitioner had completed 240 days in preceding twelve calendar months, hence, his termination without complying with the provisions of the Act is illegal.

9. On the other hand, Ld. Counsel for the respondent contended that the since the petitioner had been engaged purely on contract basis for a specific period and for specific work, hence, he is not entitled to any relief.

10. The petitioner while appearing into the witness box as PW-1 has tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copy of office order dated 29.7.2011 mark A-1, copy of joining letter dated 1.11.2011 mark A-2, copy of letter dated 21.12.2011 mark A-3, copy of letter dated 31.1.2012 mark A-4, copy of office order dated 7.1.2013 mark A-5 and copy of attendance register mark A-6. In cross-examination he admitted that he was engaged for specific work for three months only to stream line the particular work. He denied that his appointment was a stop gap arrangement and that breaks were given during his period of service. He denied that on coming to know about the issuance of show cause notice, he had himself voluntarily left the job w.e.f. 1.6.2013. He further denied that he had not completed 240 days in any calendar year.

11. PW-2 Dr. Dinesh Kumar OSD Ayurved-cum-Registrar State Ayurved and Unani Board, deposed that the petitioner was engaged in their department vide order dated 29.7.2011 Ex. PW-2/A and his joining letter dated 1.8.2011 is Ex. PW-2/B. He further stated that the department vide letter dated 21.12.2012 Ex. PW-2/C asked for necessary permission from HP Government to fill up two posts on outsource basis and vide letter dated 31.1.2012 Ex. PW-2/D, the Under Secretary allowed one post of data operator on outsource basis. Ex. PW-2/E is office order dated 7.1.2013 and the petitioner had worked w.e.f. 1.11.2011 till 31.5.2013 for more than 20 months. In cross-examination, he denied that the petitioner was engaged on contract basis but volunteered that he was engaged for a specific period to complete the pending work of the board relating with data. He admitted that after a period of 20 months, the petitioner had left the job at his own and that no representation was received in writing from the petitioner.

12. On the other hand, the respondent examined RW-1 Shri Jagir Singh, Senior Assistant, who deposed that in the year, 2011, the respondent department engaged the petitioner purely on temporary basis and his appointment was done without following the R&P Rules, just to stream line the pending work of the board and he was given fictional breaks from time to time as and when his services were not required. He further deposed that the petitioner was engaged by the department as a stop gap arrangement and he worked till June, 2013 and thereafter he left the job at his own on 1.6.2013 without any intimation. He also deposed that the petitioner has not completed 240 days in any calendar year. In cross-examination, he denied that the petitioner was appointed on contract basis on 29.7.2011. He admitted that the petitioner was engaged vide office order Ex. PW-2/A. He denied that the petitioner had worked continuously till 30.9.2011 and that the contract was renewed vide office order dated 29.7.2011 Ex. PW-2/A. He admitted that vide letter Ex. PW-2/C, the respondent had written to the Secretary Ayurveda for creation of two posts of clerks on outsource basis and that one post of data operator on outsource basis was created vide letter Ex. PW-2/D. He denied that the services of the petitioner were terminated orally on 1.6.2013. He further denied that the petitioner had completed 240 days in each calendar year and that no proper procedure was followed prior to the termination of his services.

13. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that initially the petitioner was engaged on contract basis for doing

specific work for a period of two months vide office order dated 29.7.2011 Ex. PW-2/A. It has also become clear that the respondent board took up the matter with the Government and sought permission for filling up two posts of data operator on outsource basis vide letter Ex. PW-2/C and vide letter dated 31.1.2012 Ex. PW-2/D, the Government conveyed its approval for filling up one post of data operator on outsource basis. Therefore, from the perusal of the entire evidence n record it has become clear that the petitioner was never appointed by following R&P rules and was only engaged for doing specific work for specific period to stream line the pending work of the Board. The petitioner while appearing in the witness box as PW-1 also admitted that he was engaged for specific work initially for three months only to stream line the particular work.

14. Hence, from the perusal of the entire evidence on record coupled with the admission of petitioner, it stands duly proved on record that the petitioner had been engaged by the respondent purely on contractual basis for a specific period for specific work only to stream line the pending work. In ***2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. V. Y.D Deshpande &Ors, it has been held*** that:—

> ***"The appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.***

It was also held in ***(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr.*** that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post.

I***n 2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. the Hon'ble Supreme Court*** has held as under:

> ***"11.*** **The question as to whether Chapter V-A of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter V-A thereof would not arise.**
>
> ***12.*** **Central Bank of India Vs. S. Stayam whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise."**

15. In the instant case, admittedly, the petitioner was engaged purely on contractual basis for a specific period to do the specific work and was not appointed to any regular post. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can safely be concluded that the petitioner had been engaged purely on contractual basis, who was not retrenched within the meaning of section 2(oo) of the Industrial Disputes Act, 1947. The case of the petitioner falls within the exception as provided under section 2(oo)(bb) of the Act as such the provisions of Chapter V-A of the Act would not apply. Consequently, the petitioner has failed to prove that his services were terminated by the respondent in violation of the provisions of the Act and the issue is decided in favour of the respondent and against the petitioner.

Issue no.2.

16. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

Issue no.3.

17. In support of this issue, no evidence has been led by the respondent which could go to show as to why the petition is not maintainable. Moreover, the petitioner has filed the present claim pursuant to the reference sent by the appropriate government to this Court for adjudication. Therefore, I find nothing wrong with this claim petition which is perfectly maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no.4.

18. The onus to prove this issue was on the respondent, however, during the course of arguments, the same has not been pressed by the learned counsel for the respondent. Therefore, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of June, 2017.

(PARVEEN)
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM- LABOUR COURT, SHIMLA, (H.P.)

Ref. No.	:	71 of 2014.
Instituted on.	:	4.9.2014.
Decided on	:	30.6.2017.

Nishant Kaul S/o late Shri Vimal Kaul R/o Village & Post ffice Nadaun, Tehsil Nadaun District Hamirpur, HP. ..*Petitioner.*

Vs.

Director-cum-Chairman (Board of Ayurveda and Unani System of Medicines, HP) having its office at Block no.26, SDA Complex, Kasumpati Shimla, 171009. ..*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Sandeep Dutta, Advocate.

For respondent : Shri Swaran Sharma, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of the services of Shri Nishant Kaul, s/o Late Shri Vimal Kaul, r/o V.P.O. Nadaun, Tehsil Nadaun, District Hamirpur, H.P. w.e.f. 01-06-2013 by the (i) Director of Ayurveda Block No.26, SDA Complex Kasumpti, Shimla-9, H.P. (ii) Registrar, Board of Ayurveda and Unani System of Medicines, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that he was engaged on contract basis for disposal of pending works of registration/renewal of Ayurvedic Medical Officer/Ayurvedic Pharmacist vide office order dated 21.4.2011 initially for two months and after which the contract was supposed to be seized and thereafter the services of the petitioner were renewed by the respondent vide office order dated 29.7.2011 without any break and he worked till 21.9.2011 and then a short break was given to him and again he was engaged to work in the office of respondent *w.e.f.* 1.10.2011 and he continued as such till 31.5.2013. It is further stated that vide letter dated 21.12.2011, the respondent requested the Secretary Ayurveda for the necessary approval of Government to fill up two posts of clerks on outsource basis and the Under Secretary vide its letter dated 31.1.2012, allowed one post of Data Operator on outsource basis. It is also stated that the petitioner had worked continuously without any break for more than 240 days in one calendar year and that to the utter shock and surprise of the petitioner, on 1.6.2013, his services were discontinued orally without issuing any notice, chargesheet, conducting enquiry, hence, the dismissal of his services is in violation of section 25 of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). Against this back-drop a prayer has been made that the services of the petitioner be re-engaged with all consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petitioner has not come to this Court with clean hands, estoppel, that the reference is without jurisdiction, reference is bad for non-joinder of necessary parties and that there is no relation of master and servant between the parties. On merits, it has been asserted that the engagement of the petitioner was purely on contract basis for a specific period and for a specific work and his services were engaged just to streamline the pending work of the board without following the due process of law and procedure and his services were not engaged in accordance with the R&P Rules. It is further asserted that the petitioner was engaged by the Board as a stop gap arrangement. It is denied that the petitioner worked upto 31.5.2013 without any break. It is also asserted that vide letter dated 21.11.2011, the board took up the matter with the government and sought permission for filling up the required posts in the Board and the Government vide letter dated 31.1.2012 gave its approval for filling of one post of data operator on outsource basis with the condition that the Board will meet its expenses. The government in view of the illegality and irregularities in the appointment of the petitioner, directed the Board to issue show cause notice to him but before issuance of show cause notice *w.e.f.* 1.6.2013, the petitioner himself is absent from his duties. It is denied that the petitioner worked continuously for 240 days. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 18.1.2016.

1. Whether the termination of the services of the petitioner w.e.f. 1.6.2013 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ..*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

3. Whether this petition is not maintainable as alleged? ..*OPR.*

4. Whether the petition is bad for non-joinder of necessary parties as alleged? ..*OPR.*

5. Relief.

6. Besides having heard the Learned Counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.
Issue no.2 Becomes redundant.
Issue no.3 No.
Issue no.4 Not pressed.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings.

Issue no.1.

8. The learned counsel for the petitioner contended that the services of the petitioner were engaged by the respondent on contract basis for disposal of works of registration/renewal of Ayurvedic Medical Officer/Ayurvedic Pharmacist *w.e.f.* 21.4.2011 initially for two months and he continued as such till 31.5.2013 and thereafter his services were orally terminated without issuing any notice and without paying any compensation. He further contended that since the petitioner had completed 240 days in preceding twelve calendar months, hence, his termination without complying with the provisions of the Act is illegal.

9. On the other hand, Ld. Counsel for the respondent contended that the since the petitioner had been engaged purely on contract basis for a specific period and for specific work, hence, he is not entitled to any relief.

10. The petitioner while appearing into the witness box as PW-1 has tendered in evidence his affidavit Ex. PW-1/A, wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copy of office order dated 21.4.2012 mark A, copy of

office order dated 29.7.2011 mark A-1, copy of joining letter dated 1.10.2011 mark A-2, copy of letter dated 21.12.2011 mark A-3, copy of letter dated 31.1.2012 mark A-4, copy of office order dated 7.1.2013 mark A-5 and copy of attendance register mark A-6. In cross-examination he admitted that he was engaged for specific work for three months only to stream line the particular work. He denied that his appointment was a stop gap arrangement and that breaks were given during his period of service. He denied that on coming to know about the issuance of show cause notice, he had himself voluntarily left the job w.e.f. 1.6.2013. He further denied that he had not completed 240 days in any calendar year.

11. PW-2 Dr. Dinesh Kumar OSD Ayurved-cum-Registrar State Ayurved and Unani Board, deposed that the petitioner was engaged in their department vide order dated 21.4.2011 Ex. PW-2/A and his services were re-engaged vide office order dated 29.7.2011 Ex. PW-2/B and Ex. PW-3/C is joining letter. He further stated that the department vide letter dated 21.12.2012 Ex. PW-2/D asked for necessary permission from HP Government to fill up two posts on outsource basis and vide letter dated 31.1.2012 Ex. PW-2/E, the Under Secretary allowed one post of data operator on outsource basis. Ex. PW-2/F is office order dated 7.1.2013 and the petitioner had worked w.e.f. 1.10.2011 till 31.5.2013 for more than 20 months. In crossexamination, he denied that the petitioner was engaged on contract basis but volunteered that he was engaged for a specific period to complete the pending work of the board relating with data. He admitted that after a period of 20 months, the petitioner had left the job at his own and that no representation was received in writing from the petitioner.

12. On the other hand, the respondent examined RW-1 Shri Jagir Singh, Senior Assistant, who deposed that in the year, 2011, the respondent department engaged the petitioner purely on temporary basis and his appointment was done without following the R&P Rules, just to stream line the pending work of the board and he was given fictional breaks from time to time as and when his services were not required. He further deposed that the petitioner was engaged by the department as a stop gap arrangement and he worked till June, 2013 and thereafter he left the job at his own on 1.6.2013 without any intimation. He also deposed that the petitioner has not completed 240 days in any calendar year. In cross-examination, he denied that the petitioner was appointed on contract basis on 21.4.2011. He admitted that the petitioner was engaged vide office order Ex. PW-2/A. He denied that the petitioner had worked continuously till 21.9.2011 and that the contract was renewed vide office order dated 29.7.2011 Ex. PW-2/B. He admitted that vide letter Ex. PW-2/D, the respondent had written to the Secretary Ayurveda for creation of two posts of clerks on outsource basis and that one post of data operator on outsource basis was created vide letter Ex. PW-2/E. He denied that the services of the petitioner were terminated orally on 1.6.2013. He further denied that the petitioner had completed 240 days in each calendar year and that no proper procedure was followed prior to the termination of his services.

13. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that initially the petitioner was engaged on contract basis for doing specific work for a period of two months vide office order dated 21.4.2011 Ex. PW-2/A and thereafter vide office order dated 29.7.2011 Ex. PW-2/B, he was engaged on contract basis for a period of one month for doing specific work. It has also become clear that the respondent board took up the matter with the Government and sought permission for filling up two posts of data operator on outsource basis *vide* letter Ex. PW-2/D and vide letter dated 31.1.2012 Ex. PW-2/E, the Government conveyed its approval for filling up one post of data operator on outsource basis. Therefore, from the perusal of the entire evidence n record it has become clear that the petitioner was never appointed by following R&P rules and was only engaged for doing specific work for specific period to stream line the pending work of the Board. The petitioner while appearing in the witness box as PW-1 also admitted that he was engaged for specific work initially for three months only to stream line the particular work.

14. Hence, from the perusal of the entire evidence on record coupled with the admission of petitioner, it stands duly proved on record that the petitioner had been engaged by the respondent purely on contractual basis for a specific period for specific work only to stream line the pending work. In ***2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. V. Y.D Deshpande &Ors, it has been held*** that:—

> ***"The appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.***

It was also held in ***(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr.*** that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post.

I***n 2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. the Hon'ble Supreme Court*** has held as under:

> ***"11.*** **The question as to whether Chapter V-A of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter V-A thereof would not arise.**
>
> ***12.*** **Central Bank of India Vs. S. Stayam whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise."**

15. In the instant case, admittedly, the petitioner was engaged purely on contractual basis for a specific period to do the specific work and was not appointed to any regular post. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can safely be concluded that the petitioner had been engaged purely on contractual basis, who was not retrenched within the meaning of section 2(oo) of the Industrial Disputes Act, 1947. The case of the petitioner falls within the exception as provided under section 2(oo)(bb) of the Act as such the provisions of Chapter V-A of the Act would not apply. Consequently, the petitioner has failed to prove that his services were terminated by the respondent in violation of the provisions of the Act and the issue is decided in favour of the respondent and against the petitioner.

Issue no.2.

16. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

Issue no.3.

17. In support of this issue, no evidence has been led by the respondent which could go to show as to why the petition is not maintainable. Moreover, the petitioner has filed the present claim

pursuant to the reference sent by the appropriate government to this Court for adjudication. Therefore, I find nothing wrong with this claim petition which is perfectly maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no.4.

18. The onus to prove this issue was on the respondent, however, during the course of arguments, the same has not been pressed by the learned counsel for the respondent. Therefore, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of June, 2017.

(PARVEEN)
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no.	:	10 of 2006.
Instituted on	:	10.2.2006.
Decided on.	:	30.6.2017.

Harbans Singh S/o Shri Dhani Ram R/o Village, Nain P.O Luharwin, Tehsil Ghumarwin, District Bilaspur, HP. ..*Petitioner*.

VS.

M/s Alembic Ltd., through its General Manager, Baddi, Tehsil Nalagarh, District Solan, HP. ..*Respondent*.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri P.S Chandel, Advocate.

For respondent: Shri Rahul Mahajan, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether the termination of services of Sh. Harbans Singh S/O Shri Dhani Ram by the M/S Alembic Limited, Baddi, Tehsil Nalagarh, District Solan, H.P. without conducting any domestic enquiry w.e.f. 8.9.2004 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. Briefly, the case of the petitioner is that the respondent had employed him in its unit at Baddi and he was performing his duties to the best of his abilities and was being paid a monthly wages of ₹4500/-. That he had objected to the non deduction of the amount of GPF and ESI from the wages, marking attendance in the attendance register regularly and non issuance of identity card to the workmen upon which the respondent company terminated his services on 4.8.2004 without any notice and without conducting any domestic enquiry. It is further stated that the petitioner approached the respondent for his re-engagement but of no avail. Against this backdrop the petitioner claims wages from 8.9.2004 to 8.6.2006 @ ₹ 4500/- per month, house rent paid by him w.e.f. 8.9.2004 to 8.6.2006 at Baddi @ 2000/- per month, bus fair ₹ 1200, costs of litigation ₹ 5000/- and pains, suffering and mental harassment ₹ 50,000/- along-with interest @ 12%.

3. The claim of petitioner has been resisted and contested by the respondent on filing reply wherein various preliminary objections have been raised that the claim petition is neither competent nor maintainable, that the petitioner had not completed 240 days of continuous service in terms of section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as Act), that the petition is bad for non-joinder of necessary parties, that there is no relationship between the petitioner and respondent and that the petitioner is gainfully employed. On merits, it has been asserted that the petitioner is not a workman and there is no employer-employee relationship between the petitioner and respondent as he was never an employee of respondent and he was only deputed/assigned by its employer i.e M/s Olympus personal Allied Pvt. Ltd. as a casual worker and he worked only for six days as a casual worker through contractor in the month of October, 2004. It is denied that the petitioner was performing his duties to the best of his abilities and drawing a monthly salary of ₹ 4500/-. It is further asserted that proper identity cards have been issued to all the workers which have been duly signed and countersigned by the Labour Department and there is no violation of the Act and since, the petitioner was never the worker of the respondent, hence, the question of his termination does not arise. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 26.10.2009.

1. Whether the termination of the services of the petitioner by the respondent without conducting any domestic enquiry w.e.f. 8.9.2004 is improper and unjustified as alleged? ··*OPP.*

2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? ··*OPP.*

3. Whether the claim is neither competent nor maintainable? ··*OPR.*

4. Whether the claim is bad for non-joinder of necessary parties? ··*OPR.*

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1. No.
Issue no.2. Becomes redundant.
Issue no.3. No.
Issue no.4. Not pressed.
Relief. Reference answered in favour of the respondent and against the petitioner, per operative part of award.

Reasons for findings.

Issue no.1.

8. The learned counsel for the petitioner contended that the petitioner was employed by the respondent company in its unit at Baddi in the year, 2003 at the monthly wages of ₹4500/-. He further contended that the respondent had terminated the services of the petitioner on 4.8.2004 without any notice and without conducting any domestic enquiry.

9. On the other hand, learned counsel for the respondent contended that the petitioner was never the employee of the respondent rather he was an employee of M/s Olympus personal Allied Pvt. Ltd. who had deputed him as a casual worker with the respondent company and he had only worked for six days as a casual worker. He further contended that the petitioner had never completed 240 days of continuous service as such he is not entitled for any relief.

10. The petitioner Harbans Singh appeared in the witness box as PW-1 on 5.7.2016 and he stated that initially he was engaged by the respondent as a store supervisor in the year, 2003 and thereafter every two months, ten days break in service was given for a period of ten days, and ultimately on 9.10.2004 his services were terminated. He was getting ₹ 4500/- per month. He further stated that the company had not issued any identity card to him despite repeated requests and on the next day when the matter of identity card was reported in the press media he was not allowed to enter inside the factory and the respondent closed the gate. He is unemployed and prayed that he be re-instated in service along-with all consequential benefits. It is pertinent to mention here that after his examination-in-chief, the petitioner had refused to subject himself for cross-examination as per his separate statement recorded by this Court and therefore an adverse inference has to be drawn against him.

11. PW-2 Shri Rajesh Panghaniya, Labour Officer, Solan has stated that in the year, 2004, he was working as Labour Inspector at Nalagarh and there was no factory under the name of Alembic Ltd. at Nalagarh. He further deposed that vide Ex. PW-2/A, the failure report of conciliation proceedings held between petitioner and respondent before the Labour-cum-Conciliation Officer Solan was referred to Labour Commissioner Shimla. In cross-examination, he stated that vide Ex. RX, the respondent company filed the reply to demand notice before the Labour Officer Solan.

12. PW-3 Surender singh Bisht, Labour Inspector Baddi has brought the record of the petitioner for the year, 2005 and stated that there is no record of petitioner pertaining to year, 2003-2004. He further stated that the petitioner had given a letter mark A to the respondent company, the copy of which was also given in the office of Labour Inspector, Baddi upon which the Labour

Inspector Baddi has initiated proceedings vide Ex. PW-3/A. In cross-examination, he stated that the respondent had filed reply to the letter mark A vide Ex. RY. He admitted that the letter mark A was not inconsonance with section 2-A of the Act.

13. PW-4, Shri Ranbir Singh, DGM with respondent company has brought the adult worker register pertaining to the petitioner. He deposed that he has not brought the leave register, over time register and payment of wages register pertaining to the petitioner as he was not the employee of the company. In cross-examination, he stated that the petitioner was engaged through contractor M/s Olympus personal Allied Pvt. Ltd. and the record of the contract employee is being maintained by the contractor. He further deposed that the name of the petitioner is not mentioned in the adult workers register of the company.

14. On the other hand, the respondent examined RW-1 Shri Ranbir Singh Thakur, General Manager, HR who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence the authority letter Ex. RW-1/B, the copy of factory licence Mark A, copy of certificate of registration under Contract Labour Act Mark B and copy of commencement of commercial production certificate Mark C. In cross-examination, he admitted that in Ex. RW-1/B, no specific authorization has been given to depose before the Court.

15. RW-2 Shri Sunil Kumar Manager HR with Olympus, SCO 85, 2nd floor, Sector- 38-C Chandigarh, appeared into the witness box to depose that vide authority letter Ex. Rw-1/A, he has been authorized to depose before this Court and Ex. RW-2/B is the certified copy of the resolution. He further deposed that their company had entered into a contract with M/s Alembic Ltd., to supply the labour under the Contract labour Act, 1970 and the petitioner had been deployed by them with the respondent company, who worked only for six days in October, 2004 and thereafter he left the job at his own. The petitioner never worked on the rolls of M/s Alembic Ltd. In cross-examination, he admitted that they maintain the record of the workers. He denied that he was deposing at the instance of the company. He further denied that no agreement was entered with M/s Alembic Ltd.

16. I have considered the respective contentions of the learned counsel for the parties including the written arguments filed on behalf of the petitioner and also scrutinized the entire evidence on record.

17. The learned counsel for the petitioner first contended that the power of attorney given to the learned Advocate by the respondent has not been given by an authorized person as the copy of resolution passed by the Board of Directors of the respondent company in the year, 2006, nowhere authorize the person namely Ranbir Singh Thakur to appoint any Advocate on behalf of the company. However, this contention of the learned counsel for the petitioner deserves to be rejected as the perusal of the power of attorney filed on 4.12.2006 by Shri Rahul Mahajan, Advocate shows that he has been engaged as counsel by Shri Prem Singh Bhardwaj on behalf of the respondent company who has been authorized by the respondent company by means of resolution dated 27.11.2006 wherein he has been specifically authorized to engage counsel, pleader to defend and institute cases and proceedings before the various Courts including the Labour Court.

18. The learned counsel for the petitioner further contended that since RW-1 was not authorized by the respondent to depose on its behalf, therefore, his statement cannot be read in evidence. This contention of the learned counsel for the petitioner deserves to be accepted because in cross-examination, RW-1 has admitted that no authority letter has been given in his favour by the respondent to depose before this Court. Though, he produced the authority letter Ex. RW-1/B but in cross-examination he admitted that in Ex. RW-1/B, no specific authorization has been given

to depose before this Court. I have perused the authority letter Ex. RW-1/B and from the perusal thereof it has become clear that no specific authorization has been given by the respondent company to RW-1 Shri Ranvir Singh Thakur to depose before this Court in the present case. Therefore, in view of the aforesaid back-ground, the statement given by RW-1 Shri Ranvir Singh Thakur cannot be read in evidence. However, in the opinion of this Court even if the statement of RW-1 is removed from the evidence, the petitioner has to stand on his own legs and has to prove his case by leading satisfactory evidence. It is a settled law that when there is a burden upon a party to establish a fact so as to invite a decision in its favour, it has to lead evidence. The obligation to lead evidence to establish an averment by a party is on the party making the averment. The test would be as to who would fail if no evidence is led. The party making the allegations and seeking the redressal must seek an opportunity to lead evidence. After the closer scrutiny of the record, it has become clear that the petitioner has not been able to establish that he was on the roll of the respondent company and that his termination is in violation of the provisions of the Act. PW-4, has brought on record the adult workers register of the respondent company, however, in cross-examination, he admitted that the name of the petitioner is not mentioned in the same. The burden was upon the petitioner to bring on record the cogent and satisfactory evidence about his appointment with the respondent, however he has failed to discharge his burden. The petitioner, admittedly has not adduced in evidence any such appointment letter or document to warrant such inference thereby making it evident that he was the employee of respondent company. Except for the bald statement of the petitioner there is no evidence on record to suggest that he was the employee of the respondent. Moreover, the petitioner has refused to subject himself for cross-examination by the respondent, therefore also an adverse inference has to be drawn against him and due to the refusal of the petitioner for crossexamination, his statement before this court cannot be taken into consideration and read in evidence. The case of the petitioner is that he was engaged in the year, 2003 by the respondent. However, to substantiate his contention, no documentary evidence has been produced on record by the petitioner. The further case of the petitioner is that since he had objected to the non deduction of the amount from the wages to the EPF and ESI and also to the non issuance of identity card etc. his services were terminated on 9.10.2004. However, no evidence has been produced in this respect by the petitioner. Therefore, in the absence of any evidence on record, the version of the petitioner cannot be accepted.

19. The learned counsel for the petitioner next contended that the respondent had not issued the identity card and also exploited the petitioner and had not maintained any record of attendance, working hours, over time work and record of contractors. However, to substantiate these allegations no evidence has been led by the petitioner. Therefore, in the absence of any evidence on record, it cannot be said that the respondent had exploited the petitioner as contended.

20. The learned counsel for the petitioner further contended that the petitioner has been repeatedly terminated and re-engaged in the job during the period of twelve calendar months from 1.11.2003 to 8.10.2004 and despite repeated breaks, he had worked for 250 days in preceding twelve calendar months. However, to substantiate his contention, no documentary evidence has been placed on record by the petitioner. The petitioner has not produced any evidence to suggest that he has completed 240 days in twelve calendar months preceding his termination. Rather the case of the respondent is that the petitioner had only worked for six days in the month of October, 2004 when he was deputed by the contractor to the industrial establishment of the respondent. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others***, the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

21. The learned counsel for the petitioner further contended that the respondent had terminated the services of the petitioner on 8.10.2004 without any notice and without issuing any chargesheet and without conducting an enquiry. However, this contention of the learned counsel for the petitioner cannot be accepted because as observed earlier, the petitioner has failed to prove on record that he was the employee of the respondent company and had completed 240 days of continuous service with the respondent.

22. Therefore, keeping in view the entire evidence on record, it cannot be said that the termination of services of the petitioner w.e.f. 8.9.2004 by the respondent is illegal and unjustified. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue no.2

23. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue no.3

24. Consequent upon the reference, made to this Court by the appropriate government, the petitioner had filed the claim petition which cannot be said to be not maintainable. Thus, by holding the claim petition to be maintainable, this issue is decided in favour of the petitioner and against the respondent.

Issue no.4.

25. During the course of arguments, this issue was not pressed by the learned counsel for the respondent. Hence, the same is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my findings on the aforesaid issues, the claim petition filed by the petitioner deserves to be dismissed and accordingly, the same is dismissed with the result, this reference is

decided against him and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 30th day of June, 2017.

(PARVEEN),
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-,
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNALCUM- LABOUR COURT, SHIMLA, (H.P.)

Ref no.	:	No. 84 of 2005.
Re-registered after remand on.	:	17.4.2017.
Decided after remand on	:	30.6.2017.

1. Pawan Kumar, S/O Shri Baldev singh R/O Village Bidhinaseri, P.O. Badhouni Ghat, Tehsil Kasauli, District Solan, H.P.

2. Beer Singh S/o Shri Baldev Singh R/o Village Bidhinaseri, P.O Badhouni Ghat, Tehsil Kasauli, District Solan, HP.

3. Heera Pal S/o Shri Ram Saran R/o Village Bidhinaseri, P.O Badhouni Ghat, Tehsil Kasauli, District Solan, HP.

4. Raj Kumar S/O Shri Mullu Ram R/O Village Bidhinaseri, P.O. Badhouni Ghat, Tehsil Kasauli, District Solan, H.P. ..*Petitioners*.

VERSUS

The Executive Engineer, HPSEB Electrical Division, Parwanoo, District Solan, H.P. ..*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioners : Shri Rakesh Manta, Advocate.
For respondent : Shri Ramakant Sharma, Advocate.

AWARD

The following reference has been received from appropriate government by this court for adjudication:

"Whether the termination of the services of 1 Shri Pawan Kumar S/o Shri Baldev Singh 2. Beer Singh s/o Shri Baldev Singh 3. Shri Heera Pal S/o Shri Ram Saran and Shri Raj Kumar s/o Shri Mullu Ram workmen by the Executive Engineer, HPSEB, Electrical Division Parwanoo, District Solan w.e.f. 20.8.1999, 20.8.1999, 20.12.1999 and

20.2.2000 without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen are entitled to?"

2. Before, I proceed further, it is important to mention here that no claim on behalf of petitioner Heera Pal has been filed on record. The other petitioners have filed the statement of claim.

3. Briefly, the case of the remaining petitioners is that the respondent is only licensee to supply the Electrical Power to various agencies and had employed around 50-60,000 workmen, hence, the subject matter falls under chapter VB of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) and that the respondent is also the state of H.P. under article 12 of constitution of India. It is further stated that in the month of April, 1990, the petitioners were engaged with the HPSEB as beldars at Barotiwala and Baddi Electrical Station and their services have been terminated on 1st July, 2001 illegally by way of a trickiness programme which was constituted by the some bureaucrats on 30.6.2001 at 5.00 PM and the Junior Engineer told the petitioners that new muster roll has not been sent by the Divisional Management. It is also stated that the petitioners are the workmen under section 2(s) of the Act and that all the petitioners enjoyed the continuity of service with more than 240 days in each and every calendar year and that the petitioners have become unemployed since the date of their illegal termination from service which falls under section 2-(oo) of the Act and the retrenchment of the petitioners from service is null, void and inoperative as the respondents have failed to follow the provisions of section 25F and 25N of the Act. Against this back-drop a prayer has been made that the award be passed in their favour along with cost.

4. By filing reply, the respondents contested the claim of the petitioners wherein preliminary objections qua, enforceable cause of action, that no legal or vested right of the petitioners having been infringed or violated by the respondent, claim is hit by the vice of delay and latches and time barred. On merits, it is contended that the petitioners s/Shri Pawan Kumar, Beer Singh and Raj Kumar were initially engaged w.e.f 26.1.1991, 1.4.1990 and 26.5.1990 respectively in the first instance with certain interruptions/breaks and then they abandoned their jobs and thereafter they again approached the respondents for their reinstatement after a long spell of time upon which they were re-engaged and worked upto 20.8.1999, 20.8.1999 and 20.2.2000 respectively and then again they left the job at their own and did not turn up w.e.f. 21.8.1999, 21.8.1999 and 21.2.2000 respectively. It is further asserted that the petitioners had not completed 240 days continuous service in the preceding twelve calendar months and thus they have not acquired the status of temporary workmen and that since the petitioners had abandoned the job at their own, who were not retrenched by the respondents, hence they are not entitled to any relief.

5. Rejoinder not filed. On the pleadings of the parties the following issues were framed by this Court on 16.3.2007.

1. Whether the services of the petitioners were illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? ..*OPP.*

2. If issue no.1 is proved in affirmative, to what relief, the petitioners are entitled to? ..*OPP.*

3. Whether the petition in the present form is not maintainable as the petitioners have no cause of action? ..*OPR.*

4. Whether the petition is barred by limitation? ..*OPR.*

5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Issue no.4	Yes.
Relief	Reference answered in favour of the respondent and against the petitioners per operative part of award.

Reasons for findings.

Issues no:1 & 4.

8. Being interlinked and correlated both these issues are taken up and discussed together. Before, I proceed further, it is important to mention here that this case was decided by my learned predecessor vide award dated 13.7.2009 but feeling aggrieved and dissatisfied with the award, the petitioners S/Shri Pawan Kumar and Raj Kumar approached the Hon'ble High Court by filing CWP nos. 847 and 848 of 2011 which were decided by the Hon'ble High Court vide order dated 22.3.2017 by setting aside the award passed by this Court and the reference was remanded back to this Court with the direction to decide the same afresh on or before 31.12.2017. The Hon'ble High Court observed as under:

> **"Accordingly, in view of my findings returned above, these two writ petitions are allowed and the award passed by learned Labour Court in Reference No. 84 of 2005 decided on 13.07.2009 is set aside and the matter is remanded back to learned Labour Court to adjudicate upon the Reference afresh. It is jointly submitted by learned counsel representing the parties that as the matter is being remanded back, in the interest of justice, the claimants as well as respondent Board be given an opportunity to produce additional evidence in case so required. Accordingly, it is directed that in either the claimants/petitioners or the respondent Board make request before learned Labour Court to give them an opportunity to lead additional evidence then one opportunity be accordingly provided. Parties through their learned counsel are directed to appear before learned Labour Court on 17.04.2017. Taking into consideration the fact that the Reference is of the year 2005, this Court hopes and expects that learned Labour Court shall adjudicate upon the Reference on or before 31.12.2017".**

9. Before remand of the case, the petitioners have examined two PWs in order to prove issue no.1. PW-1, Shri Pawan Kumar has stated that he was engaged as beldar by the respondents in 1990 where he worked till 30.6.2001, He further stated that he was removed from service without any notice or compensation and that he requested the JE in July, 2001 for his re-engagement but nothing has been done. He also stated that he worked for 240 days in one year. No duty card or pay slip has been issued to him and he is having no attendance record with him. In cross-examination, he denied that he was engaged on 26.1.1999. He expressed ignorance that whether he worked for 240 days and that whether he worked for 90 days in 1991, 94 days in 1992,

45 days in 1998 and 42 days in 1999. He denied that he abandoned the job himself. He further denied that he never worked from 1992 to 1998 and remained absent for 6 years.

10. PW-2 Shri Raj Kumar has stated that he was engaged as beldar in 1990 and served with respondent till 30.6.2001. He further stated that he was removed from service without notice or compensation and he had completed 240 days in each calendar year. He further stated that he visited the office of JE and SDO for his reengagement twice and thrice but nothing has been done and as such he prayed for his reinstatement. In cross-examination, he denied that he had not completed 240 days in one year. He further denied that he had worked for 127 days in the year 1991, 180 days in 1992, 101 days in 1993, 46 days in 1994, 42 days in 1996, 46 days in 1998, 48 days in 1999 and 7 days in 2000. He also denied that he had not worked in 1994 and 1995. He denied that he had abandoned the job.

11. On the other hand, the respondent had examined one Shri J.S Rana as RW-1, who stated the petitioners were engaged as beldars on daily wages with the respondent and petitioner Pawan Kumar was engaged on 26.1.1991 and he continued as such till 20.8.1999 whereas Shri Bir Singh petitioner was engaged on 1.4.1990 and continued as such till 20.8.1999 and petitioner Shri Raj Kumar was engaged on 26.5.1990 and continued as such till 20.2.2000 with fictional breaks. He further stated that the petitioners have abandoned the job at their own and they were never terminated by the respondents and none of the petitioners have completed 240 working days in any calendar year preceding their termination. He also placed on record the mandays charts of the petitioners Ex. RA, Ex. RB and Ex. RC. In cross-examination, he denied that he has intentionally withheld the muster rolls record as the petitioners have put 240 working days in a calendar year preceding their termination. He further denied that the abstract of total working days has not been prepared as per the record.

12. After the remand of the case to this Court, the petitioners have examined one Shri Ashok Kumar as PW-3, who deposed that the record summoned by this Court pertaining to petitioners Pawan Kumar and Raj Kumar was lying at Electrical Division Parwanoo but vide letter Ex. PW-3/B, they have refused to produce the record.

13. The respondent examined two RWs. RW-2 Shri Rahul Verma, deposed that the muster rolls and seniority list could not be traced in the office of Senior Executive Engineer, Electrical Division Parwanoo as the aforesaid office is the custodian of their record and in this respect a letter was also addressed to their office on 25.5.2017 Ex. RW-2/A and vide endorsement Ex. RW-2/B, they deputed one Shri Ashok Kumar clerk to trace out the record from Parwanoo office but again the record could not be traced. In cross-examination, he denied that the record is available but the same is not being produced intentionally. He expressed his ignorance that many junior persons to the petitioners have been retained by the respondents.

14. RW-3 Shri Sanjeev Kumar, Senior Assistant in the Electrical Division Parwanoo has deposed that the muster roll of the petitioners and seniority list is not available in their office. In cross-examination, he admitted that the electrical sub division Barotiwala was under Parwanoo electrical division at the time when the petitioners were working. He denied that the record has been deliberately withheld by their office.

15. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, It has become clear that the petitioner Pawan Kumar was engaged w.e.f. 26.1.1991 and he worked till 20.8.1999 and had completed 82 days in the year, 1991, 54 days in the year, 1992, 45 days in the year, 1998 and 42 days in the year, 1999 as per mandays chart Ex. R-A. It has also become clear from the mandays chart Ex. RC that petitioner Raj Kumar was engaged on 26.5.1990 and worked as such till 20.2.2000 and completed 47 days in 1990, 107 days in 1991, 180 days in

1992, 101 days in 1993, 46 days in 1996, 42 days in 1997, 46 days in 1998, 48 days in 1999 and 7 days in the year, 2000. No doubt, the case of the petitioners is that they have completed more than 240 days in each calendar year and in twelve months preceding their termination but they have failed to lead any evidence in support of their case which could go to show that they have completed 240 days in twelve calendar months preceding their termination. From the mandays charts Ex. RA & Ex. RC, it has become clear that the petitioners have not completed 240 working days in twelve calendar months preceding their termination. Though the petitioners had examined PW-3 Shri Ashok Kumar, Clerk Electric Sub Division Barotiwala who stated that when he visited Electric Division Parwanoo on 9.5.2017, they have refused to produce the record vide letter Ex. PW-3/B. However, in his evidence before this Court, RW-2 deposed that thereafter, vide letter Ex. RW-2/A, they were requested by Electrical Division Parwanoo to depute the official for the purpose of tracing the record and vide endorsement Ex. RW-2/B, the aforesaid Ashok Kumar again visited the Electrical Division Parwanoo but the record could not be traced. RW-3 categorically deposed that the muster rolls and seniority list of the petitioners were not available in their office. There is no material on record which could show that the petitioners have completed 240 working days in any calendar year and in twelve calendar months preceding their termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others***, the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

16. In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, the petitioners have failed to prove on record by leading any satisfactory evidence that they had put in 240 days in any calendar year and in twelve calendar months preceding their termination. Hence, the case of the petitioners does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

17. The further case of the respondent is that the petitioners have voluntarily abandoned their job. But the learned counsel for the petitioners contended that no notice was issued to the petitioners by the respondent for their alleged abandonment of the job as such it cannot be said that the petitioners have abandoned their job at their own. However, I am not inclined to accept this contention of the learned counsel for the petitioners in view of the overwhelming evidence on record which goes to show that the services of the petitioners had not been terminated by the respondent rather they themselves had abandoned their job. In ***Nagar Parishad Bilaspur Vs. Bone Ram reported in 2005 (1) Shim. LC 79,*** our own Hon'ble High Court has held that where the

conduct of the workman is such that he had abandoned his job, his services would stand automatically terminated in law. The relevant extract of the aforesaid judgment reads as under:

> **"10…… In this background, the only inference which can be drawn from the conduct of the workman is that he abandoned his job and his services stood automatically terminated in law. Such an automatic termination of services, caused by workman himself and not by the Employer, would not fall within the definition of "retrenchment".**

18. Furthermore, It has been held by the **Hon'ble Apex Court in (2013) 10 Supreme Court Cases 253 titled as Vijay S. Sathaye Vs. Indian Airlines Limited and Ors**. that absence from duty in the beginning may be a mis-conduct but when absence is for a long period, it may amount to voluntary abandonment of service. The relevant paras 12 to 14 are reproduced as under:

> "12. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer."
>
> **"**13. In Jeewanlal (1929) Ltd., Calcutta v. Its Workmen, this Court held as under (AIR p. 1570 para 6):
>
> > ".....there would be the class of cases where long unauthorized absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee."
>
> (See also: Shahoodul Haque v. The Registrar, Co-operative Societies,
>
> "14. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as „retrenchment from service. (See: State of Haryana v. Om Prakash)".

19. In the instant case also the services of the petitioner Pawan Kumar were terminated on 21.8.1999 and the services of petitioner Raj Kumar were terminated on 21.2.2000. Admittedly, the demand notice was raised in the year, 2005. There is no material on record to suggest as to whet steps were taken by the aforesaid petitioners after their alleged termination. In their deposition before this Court, both the petitioners had stated that they requested the JE/SDO for their re-engagement but nothing has been done. However, except for their bald statements, there is no evidence on record to suggest that they had ever visited the office of the respondent for their reinstatement. Neither any letter nor any representation has been placed on record by the petitioners to prove that they have requested the respondent for their reinstatement. The petitioners have not explained as to why they have not done so. Therefore, such conduct on the part of the petitioners gives rise to inference that they intended to abandon their job voluntarily and their case would not fall within the definition of retrenchment as such there is no question of violation of any provision of the Act.

20. Moreover, it is the admitted case of the petitioners that they have raised the industrial dispute after a lapse of about five years meaning thereby that they remained silent for about five years. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture**

Marketing Board, Sub Division Kota Vs. Mohan Lal, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising itsn judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

21. **In Assistant Executive Engineer, Karnataka Vs. Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has considered the judgment of ***Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another*** **reported in** ***(1999) 6 SCC 82*** and held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs*. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

> Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same. It was held that in such a situation the decision of ***Ajayab Singh's case*** *is not applicable.*

22. ***In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91,*** the employee was discontinued from service *w.e.f.* 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee

holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages relying upon the decision of the Hon'ble Apex Court in case of ***Ajayab Singh (supra)***. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The Hon'ble Supreme Court has considered its earlier judgment in the case of Ajayab Singh (Supra). The relevant portion of the aforesaid judgment is reproduced as under:

> 13. "In Ajaib Singh (supra), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (supra), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."
>
> 14. "The decision of Ajaib Singh (supra) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr. para 42."
>
> 15" In Balbir Singh vs. Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (supra), this Court observed :
>
> > 5." The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh v. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. ((1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38).
> >
> > 6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."
>
> 16. "Yet again in Assistant Executive Engineer, Karnataka vs. Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh vs. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (supra), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (supra) , opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

23. **In (2009) 13 SCC 746, State of Karnataka Vs. Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

24. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of

the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused.

25. In the present case, the services of the petitioner Pawan Kumar were terminated *w.e.f.* 20.8.1999 and the services of petitioner Raj Kumar were terminated *w.e.f.* 20.2.2000. Admittedly, they raised demand notice in the year, 2005 i.e after a period of about five years. No explanation has been furnished by the petitioners for not raising the demand notice within a reasonable period. Even, in their statements before this Court, the petitioners have not uttered even a single word for not raising the demand notice within a reasonable period. The burden of proof was upon the petitioners to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of about five years caused in seeking the reference but the petitioners have failed to discharge their burden. Moreover, the delay in the present case is certainly fatal because the material evidence relevant to the adjudication of the present reference is not available with the respondent. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

26. Thus, keeping in view the above cited rulings and the material fact that the petitioners had raised the industrial dispute after lapse of about five years and remained silent during this period without any plausible explanation as such no relief can be granted to them as the evidence on record clearly shows that they themselves have abandoned their job. Hence, it cannot be said that the termination of the services of the petitioners is illegal and unjustified. Consequently, these issues are answered accordingly.

Issue no.2.

27. Since, the petitioners have failed to prove issue no.1, this issue becomes redundant.

Issue no.3.

28. In support of this issue, no evidence was led by the respondent which could go to show that as to how the petition is not maintainable in the present form. Moreover, the petitioners have filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication, hence, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, this issue is decided in favour of the petitioners and against the respondent.

Relief.

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioners fails and is hereby dismissed with the result the reference is answered against the petitioners and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of June, 2017.

(PRAVEEN),
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-,
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref no. : 88 of 2010.
Instituted on : 15.7.2010.
Decided on : 27.6.2017.

Asian Electronics Ltd., Kamgar Sangh Chambaghat Solan, HP through its President/General Secretary C/o Shri J.C Bhardwaj, President HPAITUC, HQ Sasproon Solan, HP. ..*Petitioner.*

VS.

M/s Asian Electronics Ltd., Plot no. 2nd Floor, Industrial Estate, Chambaghat, District Solan, HP through its Factory Manager. ..*Respondent*.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Ex-parte.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"***Whether the demands raised vide demand notice dated 19.1.2009 (copy enclosed) by the President/General Secretary, Asian Electronics ltd., Kamgar Sangh, Chambaghat Solan, HP before the General Factory Manager M/s Asian Electronics Ltd., Plot no.1, 2nd Floor, Industrial Estate Chambaghat Solan. HP are legal and justified? If yes, to what wages and other service benefits and relief the workmen of the factory are entitled to as per demand notice dated 19.1.2009 of the workmen union?"***

2. Briefly, the case of the petitioner union is that it is a registered union. The present dispute is the result of unfair labour practice, non-co-operation and due to adamant attitude of the respondent management as the management has failed to consider the legitimate demands of the workmen and has indulged in unfair labour practice. The management has been taking the work of skilled workmen from the workers but making the payments of wages as applicable to the unskilled workmen and as such the workmen union has no other alternative but to raise the demand notice under section 2-K of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) and the respondent management had never shown any intention for accepting the legitimate demands of the union but on the other hand declared closure of the factory during the pendency of the conciliation proceedings in order to teach the lesson to the workers for raising demand notice dated 19.1.2009 and that too without paying sufficient retrenchment compensation as per section 25-F of the Act. It is further stated that the respondent has failed to seek the permission for terminating the services of the workmen during the pendency of demand notice which is totally illegal. The workmen had worked with the respondent for considerable period at lowest wages and even the respondent management had not implemented the wage structure as the workmen were being paid less than the minimum wages in violation of the notification dated 28.5.2008 regarding minimum wages which was made applicable retrospectively *w.e.f.* 1.1.2008. The following demands have been raised vide demand charter dated 19.1.2009:

1. Categorization of workmen to be declared.

2. Increase wages after categorization of workmen.

3. Introduction of promotion policy and fixation of wage pattern as per designation of workmen.

4. House Rent Allowance.

5. Dearness Allowance.

6. Demand for implementation of Statutory Rules and Misc. Service Benefits.

Against this back-drop a prayer has been made that the respondent be directed to reinstate all those workmen who were terminated/retrenched during the pendency of demand notice dated 19.1.2009 with continuity in service, seniority including full back-wages and also award all the justified demands explained above in favour of the union.

3. By filing reply, the respondent contested the claim of the petitioner union wherein preliminary objections have been taken qua maintainability, that the respondent company suffered huge losses and under compelling circumstances had to close down the factory and that there is no unfair labour practice adopted by the respondent management as the company has been complying with all the statutory provisions, the workers have been categorized and are being paid category wise wages since the date of their appointments and even the respondent had paid full and final compensation on account of closure of the factory which was received by all the workers through cheque without any objection. The demand notice is an afterthought and just to extract money out of litigation. On merits, it has been asserted that the respondent had to close the factory because of huge losses incurred and intimation to which effect was made to the Government of Himachal Pradesh, the Labour-*cum*-Conciliation Officer and the workers working with the respondent. It is denied that the workmen were not paid sufficient compensation under section 25-F of the Act. It is asserted that all the workers have been categorized according to their qualification and as per the requirement of recruitment policy of the management and all the workers were being paid wages as per the prevailing law. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 11.11.2011.

1. Whether the demands raised vide demand notice dated 19.1.2009 by the President/General Secretary Asian Electronics Ltd., Kamgar Sangh Chambaghat Solan before the management of respondent is legal and justified? ..*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner union entitled to?

3. Relief.

5. I have heard the AR for the petitioner and have also gone through the record of thecase carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:

Issue no.1	Decided accordingly.
Issue no.2	Entitled to compensation as per the provisions of section 25-FFF of the Act.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings.

Issues no.1.

7. Before, I proceed further, it is important to mention here that on 2.7.2014, the petitioner closed the evidence and thereafter the case was being listed for the evidence of respondent but on 15.9.2015, the respondent had failed to appear before this Court and to lead evidence, hence, vide order dated 15.9.2015 the respondent was proceeded against ex-parte.

8. To prove issue no.1, the petitioner union examined one Shri Surender as PW-1 who has stated that he was the Secretary of the workers union and Ex. PA is the registration certificate of the union. Vide settlement Ex. PB, the respondent company recognized the petitioner union and after the expiry of settlement, the workers union had raised demand charter Ex. PC and *vide* Ex. PD the conciliation proceedings were going on with Labour Officer Solan but instead of considering the demands of the union, the respondent company retrenched all the workers without paying any compensation under section 25-F of the Act. Ex. PE is the list the workers supplied by the management to the union according to which all the workers were skilled workers but at the time of retrenchment, they have been paid the wages of unskilled workers. The minimum wages of operator is as per Ex. PF. The workers have been terminated without any permission during the pendency of demand charter dated 19.1.2009. All the demands raised vide demand charter dated 19.1.2009 are legal. In cross-examination, he denied that all the workers have been paid full and final compensation as per entitlement.

9. The AR for the petitioner contended that the workers union had raised the demand charter Ex. PC and the conciliation proceedings were going on with the Labour Officer Solan, but instead of considering the demands of the union, the respondent had retrenched all the workers without paying any compensation under section 25-F of the Act and without seeking any permission during the pendency of the demand charter dated 19.1.2009. However, in the reply, the stand of the respondent is that the management had always addressed to the legitimate demands of the workers from time to time and since the respondent had suffered huge losses, it has to close down its factory under compelling circumstances and the respondent had paid all the dues to which the workers were entitled on closure of the factory. It has been admitted by the petitioner union in the claim petition that the respondent had closed its unit. Though, the case of the respondent is that they have paid all the dues to the workers on closure for which they were entitled, however, there is no evidence on record to suggest that all the workers have been paid legal dues for which they were entitled on closure. As per the list Ex. PE, 81 workers were employed by the company at its unit at Chambaghat Solan. Section 25-FFF of the Act deals with the compensation to workmen in case of closing down of the undertaking for any reason whatsoever which indicates that where an undertaking is closed down, for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub section (2) be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched. At this stage, it would be relevant to reproduce section 25-FFF which reads as under:

"25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub- section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Therefore, the perusal of the aforesaid section would show that when an undertaking is closed down, the workman is entitled to compensation in terms of section 25-FFF of the Act. When it is an admitted fact that the unit had been closed, the question of accepting of the demands raised in the demand charter Ex. PC does not arise at all. Similarly, the prayer of the petitioner union for reinstatement of the workers whose services have allegedly been terminated during the pendency of the demand notice dated 19.1.2009, with continuity, seniority and full back wages cannot be accepted, once it has been admitted that the unit has been closed. The workers are only entitled for the compensation to be paid in terms of section 25-FFF of the Act. **In Hondaram Ramchandra Vs. Yashwant Mahadev Kadam, (2007) 14 SCC 277,** it has been held by the Hon'ble Supreme Court that if the undertaking had been closed down, the workmen are entitled to compensation only in terms of section 25-FFF of the Act and relief of back wages cannot be granted. The relevant portion of the aforesaid judgment is reproduced as under:

> "13. **From the records, it appears that the sales office of the appellant had been closed down. We have noticed heretobefore that there exists a dispute as to whether the said closure, for all intent and purport, was effected in 1983 or 1991. The High Court evidently committed an error in not taking into consideration the factum of closure of the business from the premises of the appellant, for the purpose of grant of relief. If the undertaking of the appellant had been closed down, the workmen were entitled to compensation only in terms of Section 25FFF of the Industrial Disputes Act, 1947 and not the relief of reinstatement with back wages".**

From the perusal of the judgment hereinabove, it has become clear that in case of the closure of the undertaking, the workers are only entitled for compensation in terms of section 25-FFF of the Act. Therefore, in the present case also, the workers who were on the rolls of the respondent company at its unit at Chambaghat District Solan at the time of closure of the unit and who had been in continuous service for not less than one year in that unit immediately before such closure shall be entitled to compensation in terms of section 25-FFF of the Act. Both these issues are decided accordingly.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner succeeds and is hereby partly allowed with the result that the respondent is directed to pay compensation in terms of section 25-FFF of the Act to the workers of the petitioner union who were on the rolls of the respondent company at its unit at Chambaghat, District Solan at the time of closure of the unit and who had been in continuous service for not less than one year in that unit immediately before such closure within a period of three months from today failing which it shall be open for the petitioner union to take appropriate proceedings to recover the amount. Consequently, the reference stands answered in favour of the petitioner union and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 27th Day of June, 2017.

(PARVEEN),
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-,
Labour Court, Shimla.

ELEMENTARY EDUCATION DEPARTMENT

NOTIFICATION

Shimla-2, *the* 11th *October*, 2017

No. EDN-C-B(15)-27/2011.—In supersession of this department's notification of even No. dated 21st July, 2017 and in exercise of the powers vested in him under Section 34 of the Rights of Persons with Disabilities Act, 2016 the Governor, Himachal Pradesh is pleased to identify following posts for 4% reservation to disabled persons in the Elementary Education Department as under :—

Sl. No.	Name of the post	Class	Physical Requirement	Classification
1.	TGT (Arts)	III	S, ST, RW, C, H.	VI (B-LV) OH (OA, OL, OAL, BL) HI (Deaf not more than 60 %).
2.	TGT (NM)	III	S, ST, RW, SE, MF, W, C, H	OH (OA, OL, OAL, BL) HI (Deaf not more than 60 %).
3.	TGT (Med.)	III	S, ST, RW, SE, MF, W, C, H	OH (OA, OL, OAL, BL) HI (Deaf not more than 60 %).
4.	Shastri	III	S, ST, RW, SE, MF, W, C, H	VI (B-LV) OH (OA, OL, OAL, BL) HI (Deaf not more than 60 %).
5.	LT	III	S, ST, R, W, H, W, C	VI (LV) OH (OA, OL, OAL, BL) HI (Deaf not more than 60 %).
6.	DM	III	S, ST, R, W, SE, MF, W, C, H	OH (OA, OL, OAL, BL) HI (Deaf not more than 60 %).
7.	Home Science	III	S, ST, R, W, SE, MF, W, C	OH (OA, OL, OAL, BL) VI (LV) HI (Deaf not more than 60 %).
8.	Yoga Teacher	III	S, BN, ST, RW, SE, MF, W, C, H	VI (LV) HI (Deaf not more than 60 %).
9.	PET	III	S, ST, RW, SE, MF, W, C, H	VI (LV) HI (Deaf not more than 60 %).
10.	Music Teacher	III	S, ST, MF, C, H	OH (OL, BL) VI (B, LV)
11.	JBT	III	S, ST, RW, C, H	VI (B, LV) OH (OA, OL, OAL, BL) HI (Deaf not more than 60 %).

By order,
SANJAY GUPTA, IAS,
Principal Secretary (Edu.).

हिमाचल प्रदेश विधान सभा सचिवालय

अधिसूचना

शिमला–4, 11 दिसम्बर, 2017

संख्या वि0स0 / स्था0 / सेवा नि0 / 6–30 / 80.––सरकार द्वारा जारी अधिसूचना संख्याः GAD(GI)2 (B)-6/82-GAC-II, दिनांक 27–4–2017 द्वारा सेवा विस्तार की अवधि दिनांक 30–4–2018 को पूर्ण होने पर, अध्यक्ष महोदय, हिमाचल प्रदेश विधान सभा सहर्ष ओदश देते हैं कि श्री सुन्दर सिंह वर्मा, सचिव, हिमाचल प्रदेश विधान सभा दिनांक 30–4–2018 (अपराह्न) को एफ0 आर0 56 के उपबन्धों के अन्तर्गत सेवानिवृत्त होंगे।

हस्ताक्षरित / –
सचिव,
हिमाचल प्रदेश विधान सभा।

————————

In the Court of Shri Ajit Bhardwaj, HPAS., Sub Divisional Magistrate Shimla (Urban), District Shimla, Himachal Pradesh

Sh. Vinod Kumar s/o Sh. Hari Nand, r/o VPO Ghanahatti, Tehsil Shimla (Rural), District Shimla, H.P. . . *Applicant.*

Versus

General Public .. *Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Sh. Vinod Kumar s/o Sh. Hari Nand, r/o VPO Ghanahatti, Tehsil Shimla (Rural), District Shimla, H.P has preferred an application to the undersigned for registration of date of birth of his daughter namely NISHTHA (DOB 24-11-2014) at above address in the record of Municipal Corporation, Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 07-01-2018 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 8th day of December, 2017.

Seal.

AJIT BHARDWAJ, HPAS,
Sub-Divisional Magistrate,
Shimla (Urban), District Shimla, H.P.

ब अदालत सहायक समाहर्ता (द्वितीय श्रेणी), उप–तहसील धामी, जिला शिमला, हिमाचल प्रदेश

दरख्वास्त संख्या : 01 / 2017 **तारीख मजरुआ :** 01 / 12 / 2017

श्री भुप राम पुत्र स्व0 श्री भगत राम शर्मा, निवासी मौजा महापुणा, डाकघर धामी, जिला शिमला, हिमाचल प्रदेश।

बनाम

(1) आम जनता,

(2) प्रधान ग्राम पंचायत हलोग धामी।

विषय.––प्रार्थी के बच्चे का नाम व जन्म–तिथि ग्राम पंचायत हलोग धामी के जन्म पंजीकरण रजिस्टर में दर्ज करवाए जाने बारे की अधीन धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म पंजीकरण करवाने बारे।

हर खास व आम जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी श्री भुप राम ने अधोहस्ताक्षरी के न्यायालय में एक आवेदन–पत्र प्रस्तुत किया है कि उसने अपने बच्चे का नाम व जन्म तिथि ग्राम पंचायत हलोग धामी के जन्म पंजीकरण रजिस्टर में दर्ज नहीं करवाया है। अब प्रार्थी अपने बच्चे का नाम व जन्म तिथि ग्राम पंचायत हलोग धामी के जन्म पंजीकरण रजिस्टर में दर्ज करवाना चाहता है, जो कि इस प्रकार से है :–

क्रम संख्या	नाम	संबन्ध	जन्म तिथि
1.	दनेश शर्मा	पुत्र	21–12–1994

अतः ग्राम पंचायत हलोग उप–तहसील धामी की जनता को बजरिया इश्तहार सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त जन्म पंजीकरण बारे कोई आपत्ति हो तो तारीख 31–12–2017 को या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपनी आपत्ति प्रस्तुत करे अन्यथा आवेदन–पत्र पर जन्म पंजीकरण आदेश पारित करके सचिव ग्राम पंचायत हलोग धामी को आगामी कार्यान्वयन हेतु भेज दिया जायेगा।

आज दिनांक 08–12–2017 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता (द्वितीय श्रेणी),
उप–तहसील धामी, जिला शिमला (हि0 प्र0)।

———————

In the Court of Shri Ajit Bhardwaj (H.P.A.S), Sub Divisional Magistrate, Shimla (Urban), District Shimla, Himachal Pradesh

Smt. Kalawatu w/o Shri Suresh Kumar, r/o Village Kanswala, P.O. Parnoo, Tehsil Arki, District Solan, H.P. . . *Applicant.*

Versus

General Public .. *Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Smt. Kalawatu w/o Shri Suresh Kumar, r/o Village Kanswala, P.O. Parnoo, Tehsil Arki, District Solan, H.P. has preferred an application to the undersigned for registration of date of birth of her son namely DISHANT (DOB 10-12-2005) at above address in the record of Municipal Corporation Shimla.

Therefore, this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 04-01-2018 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 05th day of December, 2017.

Seal.

AJIT BHARDWAJ,
Sub-Divisional Magistrate,
Shimla (Urban), District Shimla.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है